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NEW ENGLAND TOWN LAW

A DIGEST OF STATUTES AND DECISIONS CONCERNING
TOWNS AND TOWN OFFICERS

BY
JAMES S. GARLAND

OF THE MASSACHUSETTS BAR.

Municipal institutions constitute the strength of free nations. Town meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish a free government, but without municipal institutions, it cannot have the spirit of liberty.

DE TOCQUEVILLE.

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BY JAMES S. GARLAND

PREFACE

The aim of the author of the present work has been to present as succinctly as possible, consistent with clearness and accuracy, the law of the different states of New England in relation to towns and town government. By reason of the great mass of statutes, it seemed necessary to group the provisions of the law around the titles of the officers of the town, in order to make them more easily accessible to the reader, as well as to bring the matter within the compass of a single volume.

An alphabetical arrangement of the different officers has been adopted, and they are presented successively in that manner. The alphabetical order of sub-topics has been followed also as far as was deemed expedient, and wherever the logical connection of the statutes has not forbidden it. Each state has been considered by itself, the arrangement of the states being determined, with the exception of Massachusetts, by their customary geographical order. A short introduction, prefixed to the statutes of each state, discusses, briefly, some of the peculiarities of its municipal system.

The laws which apply only to cities have been almost wholly ignored, it having been necessary to exclude from consideration everything that does not strictly relate to towns and town officers. Fees and penalties for the most part have also been left out, in the interest of brevity. For the same reason, no forms have been included, although many are embodied in the statutes of the different states.

It is believed that the decisions cited, of which there are more than three thousand five hundred in the book, cover the most important legal questions upon town law that have been before the courts of last resort of New England for adjudication. They have been brought down so as to include the cases contained in the latest volumes of reports, and, in arranging them, precedence in time has been the guide.

The most recent enactments of the legislatures of the several states have been incorporated with the statutes of the states. The author has used the latest revisions, including

The Revised Laws of Massachusetts, 1902,
The Revised Statutes of Maine, 1903,
The Public Statutes and Session Laws of New Hampshire,
1901,
The Vermont Statutes, 1894,
The General Laws of Rhode Island, 1896,
The General Statutes of Connecticut, 1902.

In the general introduction, a sketch is given of the more important features of town administration and a brief summary of the duties of the leading officers. This is preceded by a glance at the history and development of local government in New England, an attractive field of inquiry which deserves a more thorough and comprehensive investigation than it has yet received.

The author is conscious of the defects and short-comings of his book; but if it proves to be of service to those excellent public servants, whose labors are so poorly paid and often so little appreciated, as well as to their legal advisers, he will feel well repaid for the long and arduous labor which he has given to its preparation.

CONCORD, MASS., *July* 21, 1906.

JAMES S. GARLAND.

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INTRODUCTION.

Much learning and study have been given to the inquiry as to the origin of the New England town system. Some historians favor the parish theory, finding the sources in the organization of the English parish and vestry; others go back to the Teutonic village, and others still to a remoter ancestry, the village communities of ancient India.

The graphic picture drawn by the pen of John Richard Green, of a fifth century village in Sleswick, reveals an archetype of the communities planted in the primeval forests of New England in the first half of the seventeenth century. The researches of Von Maurer, Nasse, Stubbs, Freeman, Green, and others have left little room for doubt that the germs of our system of town government existed in the village communities of the ancient Germans, were transplanted to English soil with the Anglo-Saxon invasion, and were brought to these shores by the Pilgrim and Puritan colonists. Proofs of this are found in some features of the early towns in this country, common to both the English and German communities, and still surviving there as well as here.

Institutional forms are analogous to forms of speech. Their origins and transmission are sometimes difficult to trace. They become, however, part of the consciousness of a race or people, and are borne with them like forms of language wherever they make their habitations through the ages, undergoing such changes and development as are necessary to adapt them to new conditions as they arise. In this sense, the language of De Tocqueville has significance:

“The village or township is the only association which is so perfectly natural, that, wherever a number of men are collected, it seems to constitute itself. The town or tithing, then, exists in all nations, whatever their laws and customs may be: it is man who makes monarchies and establishes republics, but the township seems to come directly from the hand of God.”

The conflicting views held by two groups of American historians were ably presented in a discussion of the “Genesis of the Massachusetts Town, and the Development of Town-Meeting Government” by Messrs. Adams, Goodell, Chamberlain and Channing, printed in the *Proceedings of the Massachusetts Historical Society*.¹ The conten-

tion of Mr. C. F. Adams, which was in the main upheld by Judge Mellen Chamberlain, is that the town was simply a business corporation in which the inhabitants were the stockholders and the town officers the directors; that its prototype is to be found in the government of the colony, and that the town did not come from the Anglo-Saxon "tun," nor the town meeting from the vestry or the folk-mote. In support of this position he cites the early records of six Massachusetts towns. On the other hand, Prof. Edward A. Channing contends for the parish theory of the origin of our town system, restating the argument that he had previously made in his "Town and County Government in the English Colonies of North America."¹

The following extracts from Mr. Adams's address show his views upon the question at issue:

"Indeed, so far from there being any evidence in the records of these towns that the Massachusetts town and town-meeting government were derived from ancient Saxon and Germanic sources,—the 'tun' and the 'folk-mote,'—it seems clear that the town was merely a convenient though somewhat vague designation of adjacent territory for proprietary, religious, political, and military purposes, while the town-meeting, as a form of municipal government, came into existence continually during the first twenty years of the settlement, and through a process of evolution or rather of reproduction, as simple as it was natural.

"The relation of the town to the church within it came to be, outside of Boston, the same as that of the modern religious society to the church with which it is connected; that is, it built and kept in repair the church edifice, and its consent was necessary to the settlement of a minister nominated by the church, and it determined the amount of his salary, to be levied on the taxable persons and estates within the town.

"All these matters were transacted in town-meeting duly called, and record thereof entered by the town clerk. When a town was found too large, or its inhabitants too numerous to be accommodated in a single church, or for other sufficient reason, it was divided territorially to form a second church. This second church, like the first, in its secular affairs was based on the taxable persons and estates within its limits; and the new religious society was called the second parish, district, or precinct, 'precinct' being, I think, its legal designation. This new precinct was a quasi-corporation for religious purposes, and, like the town, required a clerk to keep its records, assessors and collectors. Its powers and duties were defined by statute; and we then began to hear the word 'parish'—a survival, and the only survival, I find of the English parish,—in common use as the most convenient designation of the new division."

¹ Johns Hopkins Univ. Stud., X.

To these views, Professor Channing¹ offered the following objections:

"Mr. Adams maintains that the charter was the model on which the town system was based. I think there are two objections to that: First, the towns were not based on any model; they grew by the exercise of English common sense and political experience, combined with the circumstances of the place."

Prof. Herbert B. Adams, in an earlier paper on the subject, says: "In the customs of the courts leet and of the Old English parish meeting, which was but the ecclesiastical outcome of old Saxon self-governing assemblies is to be found the prototype of New England town meetings. Of parish officers, the committee of assistance, or select vestry, the vestry clerk, constable, way-man, or way-warden, re-appeared as the selectmen, clerk, and other corresponding officers of the town."

The primitive settlements in New England are thus characterized by Professor Adams: "The original idea of New England towns, like that of their Old English and Germanic prototypes, was that of a village community of allied families settled in close proximity for good neighborhood and defense, with homes and home lots fenced in and owned in severalty, but with a common town street and a village green or home pasture, and with common fields allotted outside the town for individual mowing and tillage but fenced in common, together with a vast surrounding tract of absolutely common and undivided land used for pasture and woodland, under communal regulations."²

Illustrations of the early conditions are to be found in the records of the original towns in the different colonies; and it would be both interesting and profitable to make numerous citations from them, but lack of space allows of the presentation of only a few as types of the many which are described in the town histories.

Stockades, town gates and common fences built for protection and to separate groups of houses and homesteads from the common lands outside, and palisades and picket fences around the individual houses and home-lots within, were very common in the early New England villages.

Defensibility against attacks by the Indians was of paramount importance, especially on the frontiers, but it appears also to have had controlling influence in the plan of the first settlement on the coast. In the letter of Isaak de Rasières, found in recent years at the Hague, is preserved a picture of New Plymouth as seen by him in 1627.

¹E. A. Channing, 2 Proc. Mass. Hist. Soc., VII, 262.

²H. B. Adams, "The Germanic Origin of New England Towns," Johns Hopkins Univ. Stud., II, 25, 26.

Mr. J. A. Doyle in his "English Colonies in America" thus embodies in his text the old Dutchman's account:

"The new town stood on rising ground separated from the sea by some twenty yards of sand. The buildings were laid out like a Roman city in miniature. Two streets crossing one another formed the town. At their meeting stood the Governor's house. Before it was an open space, the forum as one may call it, guarded by four cannon, one to command each of the ways, which met there. On an eminence behind the town, but within its precinct, stood the building which at once testified to the civil and religious unity of the little commonwealth and to the constant presence of an armed foe, the public storehouse, place of worship, and fort, in one, protected with battlements and six cannon.

"Each house was a substantial log hut, standing on its inclosed patch of ground. Round the whole ran a palisade, the "tun," which, as a distinguishing feature, so often gave its name to the Teutonic settlements. Of the four entrances three were guarded by gates, the fourth being sufficiently protected either by the fort or the sea. Along the stream to the south was the arable land, divided into small patches of corn. Beyond lay the common pasture, the mark, with its diversity of meadow, wood, and jungle."¹

The records of Newtowne (Cambridge) disclose that the space inclosed within the original paling was divided among forty-two persons, and that it was further agreed "that if any man shall desire to sell his part of impaled ground, he shall first tender the sale thereof to the town inhabitants interested, who shall either give him the charge he hath been at, or else to have liberty to sell it to whom he can." The house lots were laid out compactly, and land for cultivation was assigned within the pale, and afterward elsewhere; the grazing lands were not divided, but the herds of cattle were daily driven out to range the common land, and the "cow-common" remained undivided until a comparatively late period.²

Primitive New Haven was surrounded with a high palisade, having openings guarded by gates on its four sides. On the frontier, as in the Connecticut valley, palisaded towns were a military necessity. The town records of Northampton, Hatfield, Deerfield and Greenfield give us glimpses of the conditions which required such defenses against the common enemy.

John Dickinson of Hatfield was allowed by vote of the town on March 6, 1690, liberty to remove his house into town and retain his lot outside, provided he did his share of fortifying and built again upon his lot when he could do so without fear of the Indians.

¹ J. A. Doyle, "English Colonies in America," I, 32.

² C. F. Adams, "Genesis of a Massachusetts Town," 24.

The rules for common fencing in Connecticut are shown in the following votes found in the manuscript records of Hatfield Side:

"Jan. 14, 1660. Agreed and voted at a side meeting that there shall be a common fence made from Goodman Fellows to the landing-place, every man fencing the end of his lot and Isaac Graves to fence his part next to Goodman Bool's meadow lot, the rest to be done in common."

"May 11, 1663, Agreed at a side meeting that every man shall set down a stake with the two first letters of his name by every parcel of fence by the 13th of this month."

The town records of Salem, Massachusetts, reveal the plan of dividing the common lands. As early as 1637, it was "agreed that the marsh meadow lands that have formerly layed in common to this Towne shall now be appropriated to the Inhabitants of Salem, proportioned out unto them according to the heads of their families. To those that have the greatest number an acre thereof & to those that have least not above have an acre, & to those that are betweene both 3 quarters of an acre, alwaies provided & it is so agreed that none shall sell away their proportions of meadow more or less, nor lease them out to any above 3 years, unless they sell or lease out their howses with their meadow."¹

This division was managed by the "five Layers out," and the heads of families each received the quantity of land prescribed by the order.

"Common of wood as well as of meadow was long practiced at Salem. It was ordered in 1636, that all the land along the shores on Darby's Fort side up to the Hogsties and thence toward Marblehead along the shore and for twenty rods inland should be reserved for the Commons of the Towne to serve it for wood & timber."²

A townsman might have what wood he needed for fuel, fencing, or building, but it was ordered that "noe sawen boards, clap boards, or other Timber or wood be sold or transported out of town by any inhabitants unless it be first offered for sale to the thirteene men."

"Salem once had its cowherds, swincherds and goatherds. They too of old time came through the streets of the village blowing their horns and creatures were turned out to their pastoral care," as is done in the Thuringian Forest and Swiss mountain villages to-day. In the spring of 1641 it was agreed in Salem town meeting that "Laurence Southweeke & William Woodbury shall keep the milch cattell and heifers this summer. They are to begin to keepe them the 6th day of the 2d moneth. And their tyme of keeping of them to end the 15th day of the 9th moneth. They are to drive out the Cattell when the sun is halfe an hower high & bring them in when the Sun is halfe an hower high. The Cattell are to be brought out in

¹Town Records of Salem, I. 61, 101-104.

²Ibid. I, 17, 34, 112, 196, 219.

the morning into the pen neere to Mr. Downing's pale. And the Keepers are to drive them & bring such Cattell into the Pen as they doe reseave from thence."

In the morning the creatures were driven to the great Cattle Pen at the gate of which stood the herdsman, who at a certain hour drove all afield. If a towns-man came late he had either to foliow after and catch up with the herd, or else be his own herdsman for that day.

The herdsmen were at first paid for their services by the town, but later by individuals, at a rate fixed upon in town meeting, usually about four shillings and six pence for the season for each cow, to be paid in butter, wheat, and Indian corn.

The cattle of every town were marked with the first letter of the town's name roughly painted with pitch. Where the names of several towns began with the same letter, as Salem, Salisbury, Sudbury, the towns had to agree upon differently shaped initials. Salem had a plain capital S; Salisbury, the dollar mark, \$; Sudbury, an upright dash at the top of its initial.

Salem had not only town herdsmen, but town cows, sheep, and dogs as well as a town horse. Both cows and sheep came into possession of the town in settlement for debts or taxes. In 1645, an order was passed in Salem whereby a half dozen brace of hounds were to be brought out of England at the expense of the town. These were used probably for herding cattle or hunting wolves. Three years later an act was passed by the Colonial legislature, authorizing the selectmen of towns to purchase at the town's expense as many hounds as should be thought best for the destruction of wolves and to allow no other dogs to be kept in the town except by magistrates, or by special permit.

The first mention of the town pastures of Salem is found in the town records for 1634. It was then agreed that the Town Neck should be kept for the feeding of cattle on the Sabbath. On week days the goats were to be driven to one of the larger Commons, so that the grass upon the Neck land might have a chance to grow for pasture on the Lord's day.

The following vote of the Old Commoners in 1714 illustrates the principle of stinting as applied to a permanent town pasture: "Voted, that ye neck of land to ye Eastward of ye Block house be granted and reserved for ye use of ye town of Salem, for a pasture for milch cows and riding horses, to be fenced at ye town's charge, and let to ye inhabitants of ye town by ye selectmen and no one person to be admitted to put into said pasture in a summer more than one milch cow or one riding horse and ye whole number not to exceed two and a half acres to a cow and four acres to a horse;

ye rent to be paid into ye town treasurer for ye time being for ye use of ye town of Salem.”¹

Authority to stint common pasturage was given by the Colonial legislature to the selectmen of every town in 1673. Boston Common did not cease to be a grazing field till 1830. Plymouth still has some two hundred acres of commons, mostly forest, known as Town Lands. In Salem are the Great Pastures, a tract of three hundred acres owned by a small company of descendants of the first settlers; and in Sandwich what is known as the Town Neck, belonging to twenty-four proprietors, is managed to this day as a common field. It was originally the property of the whole town.²

There is much in the early history of the colonies to support the parish theory of the origin of our town system of government. When the migration to this continent began, and for some time afterward, town and parish in England were practically one; and that was true generally of town and parish in the colonies of New England, from their first settlement till near the end of the eighteenth century.

The causes of this identity of the town and parish in early New England are not far to seek. Whatever knowledge and experience the colonists had of self-government had been gained in the parish meeting and the administration of town and parish affairs in their old home. What course, therefore, could have been more natural than to follow the methods grown familiar by use and tradition, making such changes and additions as the new conditions required, in governing the new communities established in the new land. That course appears to have been followed by the settlers of Plymouth, Massachusetts Bay, Connecticut and New Haven, and to some extent in Rhode Island. The church became the nucleus around which the town was gathered; the meeting-house was the centre of both religious and secular activity.

“The New England meeting-house,” said President Porter, “is the symbol of much that is characteristic of New England life. Its erection was the starting-point of every one of the earlier New England communities, and it has been the rallying-point of their history.”

In New Haven, the first tax of which there is any record was for the building of the first meeting-house, and the town’s mark was put upon trees suitable for repairing it, “that nobody elc may medle with them.”³

The foundation of the earliest towns in all the colonies was a church. “Plymouth itself was a church, and its earliest government was doubtless chiefly ecclesiastical, having little to record in its book

¹ Salem Records, 1, 99; *Ibid*, 207; Mass. Col. Recs. II, 252-3.

² H. B. Adams, *J. H. U. Studies*, 1, 59, 60. Mass. Col. Recs., IV, pt. 2, 563.

³ C. H. Levermore, “*Republic of New Haven*,” 76.

of civil law. A new church was formed in Duxbury in 1632; at a later day another in Marshfield, and in 1634, a third in Scituate. These churches were the frames on and around which the towns were built.”¹

In Massachusetts, as late as 1834, when the statute was repealed, towns were required to be constantly provided with a public Protestant teacher of piety, religion and morality, and in default for three months out of six months, a town was subject for the first offense to a penalty of from thirty to sixty dollars, and from sixty dollars to one hundred dollars with costs for each offense thereafter, if adjudged by the court of general sessions of the peace for the county to be sufficient to be so provided.

The New England town of to-day, except in the sparsely settled districts which have been least affected by the march of modern progress and improvement, presents a very different aspect from that of one hundred years ago.

In the backward country towns, however, are still to be seen the village common and the ancient meeting-house, now devoted to religious uses only. A row of old-time dwelling-houses, solidly built, with huge square chimneys rising above a broad expanse of roof; sometimes a lean-to sloping toward the rear, the windows filled with small, square panes of glass, the front door flanked with side-lights and topped with a fan-shaped transom—these with ample spaces between, front the common or the wide thoroughfare, which, shadowed by giant elms, runs through the village and loses itself at length in the narrow way that winds in and out among the farms.

A weather-beaten blacksmith's shop, its yard filled with wrecked wagons and running gear, stands beside the way, neighbor to the old tavern-stand, fallen to decay since the stage-coaching days. The town house, an unambitious edifice which contains the large hall where the town meetings are held and lesser rooms for the town officials; an antiquated academy, a modern schoolhouse, and a “store” or two, centres of the trade and political gossip of the town, in one of which is the post-office, make up the list of public and semi-public buildings.

Neither the steam railroad nor the trolley car has yet invaded the precincts of this rural borough. The public ways are not lit up at night by the glare or the fitful flashes of the electric light, nor rendered more gloomy by the feeble rays of the kerosene lamp, perched upon the top of its infrequent post. There is little animation in the every-day life of the place, but when the farmers come in on election days, or for the annual town meeting, all is bustle and activity where quiet and dullness reigned before.

¹ Wm. T. Davis, “Ancient Landmarks of Plymouth,” 81.

The day is given up to town business. In the early hours before the meeting assembles, the local magnates and leaders of the people are busy canvassing the voters for favorite measures or candidates. Generally the party or town caucus has "fixed" the official "slate" beforehand; but there may be independent nominations to be considered, which serves to increase the interest of the occasion.

In every town but more especially in the older and smaller ones, there is a small group of men, generally natives and familiar with the traditions of the place, who make it their business to steer or run the annual town meeting. These Warwicks do not always seek for office or employment for themselves, but find their account and pleasure in determining who shall have them, and in shaping the fiscal or other policies of the town from year to year.

In this modern folk-mote, partisan feeling runs high, and the champions of rival cliques or interests contend with a zeal that at times grows in intensity in inverse ratio to the magnitude and importance of the matters involved. Here tradition and family prestige have a dominating influence. A flash of wit or a shaft of ridicule from the lips of one of the ruling class has more power to sway the popular mind than the labored argument or impassioned oratory of another. So much weight has a favored personality. Yet every man has his say, the foolish as well as the wise, and although the counsel of the former sometimes prevails, the general result is approved. If not for the best, it can be amended at the next gathering of the people.

Much pride is felt in the distinction conferred by an election to a town office and in the discharge of its duties. That is its chief reward, for the compensation is only nominal. Yet the tenure of certain offices, that of town clerk, for example, renewed by successive annual elections, holds not infrequently for very long periods. The writer has known a town clerk who exercised that office continuously for forty years, and numbers among his acquaintance another devoted citizen of the same place who has served his town in various official capacities for fifty-two years. Fortunate indeed is the town that possesses citizens of such fitness and fidelity.

It is not, however, with this old-fashioned type chiefly that the student of the town-meeting system has to deal, but rather with the modified forms of it presented by the vast majority of the New England towns of to-day. The causes that have produced these modifications of the primitive form are many and various. A few only and the most potent can be considered here. The chief cause perhaps of these changes is the growth in numbers of the foreign population, which have greatly increased in recent years. This growth is mainly due to the multiplication of mills, factories and other industrial establishments, which have brought in large numbers of persons from the British provinces and overseas.

These immigrants are almost wholly without knowledge and experience of popular government or institutions, are frequently of a low grade of morals and intelligence, and readily fall under the leadership of demagogues. The change in the character of the electorate can be judged from the fact that in Massachusetts scarcely one-third of the population is of native parentage, and other states have a less proportion.

Along with this deterioration in the quality of the electorate has come a growing tendency on the part of the more intelligent and prosperous of the native population to shirk their public duties. They not only neglect to attend the caucuses which nominate the candidates for public office, but they also stay away from the town meetings, thus giving to the unscrupulous members of the community the opportunity they are quick to improve of promoting schemes of public plunder.

The multiplication of the number and the greatly increased magnitude of the objects requiring the care and management of the administration in the larger towns, such as police, water supply, drainage, supervision of street railways, electric lighting, public parks, streets, cemeteries, schools, and libraries, and the large sums of money to be raised, appropriated and expended upon them, require elaborate methods of administration and finance, and call for skill and experience in large affairs and complicated details not usually to be found in a town meeting.

The increasing difficulty of retaining the services in town offices of the better class of citizens, and the tendency of the offices to fall into the hands of the professional class of politicians and office-holders, is a further drawback to the maintenance of the system. These difficulties, however, although serious, may be overcome, if the civic spirit be strong enough in a sufficient number of the more intelligent and responsible citizens, to gain and keep the control of public affairs.

But a seemingly insurmountable obstacle to the continuance of the town meeting plan appears when the constituency becomes so large as to be wholly unmanageable. That condition puts an end to all deliberation, and places the town under the rule of an irresponsible mob, from which there is no refuge or escape, except in a change of the form of government.

This experience has come to a large number of towns in New England. The most notable example was Boston which, in 1822, with a population of 44,000, and after one hundred and eighty years' experience with the town meeting, was compelled to abandon it, and obtained from the General Court a city charter, the first ever granted in Massachusetts.

At several times previously proposals had been made to change the

form of government of the town, first in 1708, when a committee was appointed to draft a "charter of incorporation;" but at the annual meeting in March of the following year the "townsmen" refused to accept the draft submitted to them, and the matter was dropped. Another attempt was made in 1784, and again in 1791; both proved abortive. The next move for a change was made in 1815, and likewise failed; but the agitation developed the fact that there was no provision in the state constitution authorizing the creation of city governments by the General Court.

An amendment to the Constitution, granting the necessary power, was drawn up, submitted to the people, and, although strenuously opposed in certain quarters, was adopted by popular vote in April, 1821.

In January, 1822, the subject was brought before a special meeting of the inhabitants in Faneuil Hall, and a scheme for a charter matured after a protracted debate lasting three days. This was submitted to the voters and adopted. An application was thereupon made to the General Court for a charter, which was granted, and on February 23, 1822, the Governor approved "An Act establishing the city of Boston." It is of interest to know that this charter of Boston, the first city incorporated by the Commonwealth, was drawn by Lemuel Shaw, afterward the great Chief Justice of the Supreme Judicial Court, the foremost jurist of this state and among the greatest of his time and country.

The charter thus granted was accepted by vote of the inhabitants on March 4, 1822; and the new city government was organized under it on the following first day of May with John Phillips as the first mayor.

The language of the amendment to the Constitution under which the city was incorporated gave rise at the time to a question as to whether Boston came within the category used in the amendment, of "corporate towns," as no formal act of incorporation of the town had ever been passed, the only legislative vote bearing on the matter being an order that "Tri-mountain shall be called Boston," made by the General Court on September 7, 1630. The competency of the act of incorporation has, however, never been questioned.

The new charter followed in the main the lines of previous city charters in England and this country, and has in its turn been the model for others. It divided the city into twelve wards and vested the administration of its municipal affairs in a mayor, a "Select council, consisting of eight persons, to be denominated the Board of Aldermen," and another body having forty-eight members to be called the "Common Council," the two boards in their joint capacity to be known as the "City Council."

The Mayor and Board of Aldermen were to be chosen, annually, by

all the citizens, and four members of the Common Council were to be elected from each ward, by the citizens of the ward. A warden and a clerk in each ward, elected at the ward meetings, performed the same duties as the moderator and clerk, respectively, of towns.

Thus the people exchanged a democracy for a republic, the direct management of their local affairs for a scheme of representative government, in which their control ceased at the ballot-box.

As a notable example of a community having a large population and great wealth, still satisfactorily governed under the town meeting system, may be cited the town of Brookline, Massachusetts. In the 200th annual report of the town officers and town records of the town for the year ending January 31, 1906, a bulky volume of upward of eight hundred pages, are found the following interesting particulars.

The town has an estimated population of about 24,000; 6,637 assessed polls, and about 4,000 registered voters. The total valuation of taxable real and personal estate is \$90,852,400. The total expenditures for the year 1905 were over \$1,750,000. The remarkable growth of the town during the past twenty-two years is shown by comparison with the statistics of 1883. This comparison reveals the fact that the population during that period increased 280 per cent.; real estate, 400 per cent.; personal estate, 250 per cent.; and the number of dwellings, 275 per cent.; while the tax rate had risen from \$11.50 to \$12, only, in the \$1,000. These results seem to prove that the town system when well conducted works well even when employed by aggregates of population and wealth, of large magnitude.

The municipal affairs of Brookline are managed by five selectmen, who also act as a board of health, and with two other persons. (women) constitute the board of overseers of the poor. There are three assessors, a treasurer and a collector, a school committee of ten, twelve trustees of the public library, six cemetery trustees, a water board of three members, three park commissioners, a committee of three on planting trees, three auditors, two fence viewers, five constables, a pound keeper and two field drivers, all chosen at the annual town meeting. All serve for one year only except the members of the school committee, water board, trustees of the library and of the cemetery, and the park commissioners, who are chosen for three years.

The annual budget calls for over a million dollars exclusive of state and county taxes and metropolitan sewer and park taxes, which exceed two hundred and seventy-five thousand dollars, making a sum of over \$1,300,000 to be raised annually by taxation. The expenses of administration are slightly in excess of \$70,000.

The annual appropriation for maintaining the public schools ex-

ceeds \$200,000, and that for public safety and health, which includes the cost of the police and fire departments, public sanitation and a public bathhouse, is over \$200,000.

The public school system is of the highest type of efficiency, and the police and fire departments are thoroughly organized and well administered under chiefs of approved skill and ability. In the conduct of the business of all branches of the public service, Brookline has the reputation of being a model town.

The large concourse of voters at town meetings has led in recent years to much discussion and various proposals for a modification of the time-honored method of voting, but none of the proposed changes has thus far met with general approval. A form of referendum has, however, been adopted, which promises the needed relief.

This was authorized under a special act of the Legislature, passed in 1901. Under the provisions of this act, any vote passed at any original or adjourned meeting, to which 700 or more legal voters have been admitted, shall, upon petition, be submitted to the voters at large for ratification at a subsequent town meeting, except that votes for moderator or for any town, county, state or national officer, or on any proposition on which by any special or general law of the Commonwealth, a yea or nay vote by the voters of the town at large is required to be taken by ballot, shall be final.

In order to exercise this right of referendum, a petition must be filed with the town clerk within five days from the final adjournment or dissolution of a town meeting, signed by at least one hundred legal voters of the town requesting that a vote, or votes, passed at such meeting be submitted to the voters of the town at large for ratification. At the expiration of the five days mentioned, the selectmen call a town meeting for the purpose of submitting the votes specified in the petition to the voters at large, and they may, in the warning for the meeting, in their discretion, include any or all of the votes passed at the meeting relating to the same subject-matter.

In order to ascertain the number of legal voters present at a town meeting, registering turn-stiles may be used at the door, and none but registered voters are admitted to the meeting. The turn-stiles are in charge of police officers, who from long service have become acquainted with the faces of the voters, and their presence serves as a restraint upon persons, not voters, who might desire to obtain entrance to the meeting. The number of such persons who unlawfully gain admission is so small as to be practically of no moment.

With the aid of this method of expressing the popular will, it is hoped that a crisis like that which arose in Quincy, Massachusetts, in 1887, and led to its adoption of a city charter, described by Mr. Charles F. Adams in his "Three Episodes of Massachusetts History," may be avoided. It does not seem likely to occur in Brookline

as long as the better class of citizens of that town retain the active direction of its affairs.

The relations of the county to the towns which compose it are not organic and vital in New England, as is the case in the Western and Southern States. The older towns were founded in many cases before the counties were formed, and the creation of the latter grew out of the necessities of civil and judicial administration. The course pursued in the colony of Massachusetts Bay may be taken as a typical example.

In March, 1635-6, the General Court ordered that four courts should be "kept every quarter at each of the following places: 1. Ipswich, to which Newbury shall belong; 2. Salem, to which Saugus shall belong; 3. Newtowne (Cambridge), to which Charlestown, Concord, Medford and Watertown shall belong; 4. Boston, to which Roxbury, Dorchester, Weymouth and Hingham shall belong."

In 1643, the whole colony, including all of New Hampshire then settled, was divided into four shires, Essex, Middlesex, Suffolk and Norfolk. These shires as counties still exist, although with different boundaries. Later ten other counties were formed of the remaining territory.

The relations of the counties to the state and to the towns that compose them are expressed somewhat differently in the statutes of the different states.

In Connecticut and Vermont, the statutes declare that the several counties are constituted by the towns. In New Hampshire they recite that the state is divided into ten counties and that all towns, places, lands and waters within their bounds, respectively, shall be parts of the respective counties; and in defining the boundaries of each, the statute follows the town lines. In Maine, the statute merely says that the state is divided into counties, districts, towns, and plantations.

County affairs are managed by officers elected by the towns and their expenses are paid by them, the amount contributed by each town being determined by the county authorities, or by the state legislatures.

In New Hampshire, the amount of taxes to be raised by each county is fixed biennially by the county convention, a body composed of the representatives of the towns of the county in the General Court; and the contribution required from each town is its just proportion of that amount, as determined by the county treasurer. A similar method is pursued in Connecticut.

In Vermont, the amount of the county taxes is fixed by the county court, which issues its warrant to the collectors of the towns for their respective proportions of the same.

In Maine and Massachusetts, the duty is performed by the county commissioners as authorized annually by the legislature, which grants

specified sums for specific purposes, separately, to each county. The taxes thus imposed upon the towns are assessed and collected by the town officers.

In Rhode Island a somewhat anomalous condition exists. Certain groups of towns are declared by the statute to constitute the several counties, and one of the towns in each is designated as the county town. The statutes nowhere state that the counties are corporations although towns are declared to be such. There is no county organization, and properly speaking there are no county officers. It is true that sheriffs are elected by the General Assembly for the different counties, but their writs run through, and their salaries are paid by, the state. There are also clerks of the appellate and common pleas divisions of the Supreme Court in the different counties, chosen by the legislature and paid by the state. Both sheriffs and clerks are called in the statutes "state officers."

Historically, there can be found acts of the colonial legislative bodies relating to counties bearing the same names as those of to-day, but they were not, with the possible exception of that relating to Bristol, in any proper sense cast of incorporation.¹ There are no county records, no county roads or bridges, no county taxes, no county courts of probate. The towns are all in all.

There are, to be sure, buildings in the several counties which have been erected or appropriated and are used as jails by the state, but the keepers, except in the county of Providence, are sheriffs, who are state officers. The county can neither sue nor be sued, nor do any act or thing incident or belonging to corporate life. If it is still contended that the counties of Rhode Island are bodies corporate and politic, it must be said in reply that it is certainly hard to discern an entity, civil or political, which serves no visible purpose, and performs no visible function in the state.

In considering the relations of towns to the state, it appears that, while not always deriving their existence from the state, they are subject both in their internal affairs and their external relations not only to general laws but also to special enactments of the legislature. Yet in a profound and real sense this regulation and control is only a form of self-government; for the law-making body is made up of representatives of the towns themselves. Town representation was the original, constituent idea in the creation of the General Court in all the New England colonies; and this principle controls in the constitution of the legislatures of the several states to-day.

Every town is entitled to at least one representative in the popular branch of the legislature, in all the states except Maine and Massa-

¹5 R. I. Col. Recs. 208, 301; 4 Col. Recs. 427; 3 Col. Recs. 477.

chusetts. In the latter state the departure from the principle is only apparent, for although apportioning representatives equally among the counties, the Constitution, as amended, expressly prohibits any division of a ward or town, in the formation of representative districts.

The towns are not expressly recognized in the election of senators in any of the states except Rhode Island, in which state each town and city elects one member of the state senate; but in the determination of senatorial districts the integrity of every town is carefully preserved.

The earliest recognition of towns by the General Court of the Bay Colony, as stated above, was at its second meeting at Charlestown on September 7, 1630, when it was ordered "that Tri-mountain shall be called Boston, Mattapan, Dorchester, and the town upon the Charles River, Watertown." It is a curious fact that there is no record of any such recognition by the Court of Charlestown. This legislative naming of the early towns has generally been regarded as tantamount to an act of incorporation, although destitute of all the usual formalities employed in such acts. The more correct view would seem to be that the General Court at the time simply assumed the existence of those communities as constituent parts of the territory over which it had jurisdiction, and in view of the uncertainty of the limits and bounds of each refrained from any more exact definition of them.

Neither the Plymouth compact, which is usually referred to as the basis of the first settlement of that colony, nor the patents under which both the Plymouth and Massachusetts colonies were established, make any mention of towns, nor grant any authority for their organization.

The question of the inherent rights of the town as against the sovereignty of the state is of purely academic interest, as no serious assertion of such a claim seems likely ever to be made. The assumption on the part of the legislature of the power of controlling the police of towns and cities by the creation of state boards of police commissioners, which has been made from time to time in Massachusetts and other states of New England, has, however, given rise to some discussion as to the limits of state authority over the local government of towns and cities.

Whatever may be the view held as to the original relations of towns to the state, as to whether the state was organized by the towns or whether the towns were creatures of the state, there can be no doubt at the present time that the towns are subject in all essential matters to the authority of the state. This is shown by the fact that their boundaries may be altered; that they may be subdivided, and portions of their territory annexed to neighboring towns; that they may be subjected to fines for failure to elect officers; that they may be

indicted for creating or maintaining public nuisances, for neglect to maintain highways, and for various other offenses against the general laws. In Massachusetts, they may be fined for neglecting to choose and return members to the House of Representatives.

They are also dependent upon the legislature for grants of certain powers and privileges in the administration of their local affairs. All of which is practically a recognition of their dependence upon and subordination to the state, and is entirely inconsistent with the theory of their independence of the state in either civil or political things.

New England towns are public corporations and were either original, constituent parts of the state, or have been incorporated by the legislatures of the states in which they are situated. The oldest of them long antedate the states themselves to which they belong. Of such are Hartford, Wethersfield, and Windsor, Connecticut. To these towns belongs the distinction of having framed in 1639, a written constitution, which continued in force with very little alteration for one hundred and eighty years, and has been called "the first example in history of a written constitution, a distinct organic law, constituting a government and defining its powers."

In Rhode Island earlier compacts were made by different towns, but it was not until May, 1647, that the freemen of the four towns, or colonies, of Providence, Portsmouth, Newport, and Warwick accepted the charter brought back from England by Roger Williams, and formed a government thereunder for the united colony that afterward became the state.¹

In 1648, upon petition of "the freemen of the towne of Providence," the General Assembly established under the Roger Williams charter, granted "a free and absolute charter of civill incorporation and government to be knowne by the name of the "Incorporation of Providence Plantation in the Narragansett Bay in New England." ²

A similar charter was on the same date granted to Warwick and probably to Portsmouth and Newport.

The question of the inherent or reserved rights of towns has from time to time been passed on by the courts of last resort in the several states, and has generally been decided in the negative.

In *Webster v. Harwinton*, 32 Conn. 131, Butler, J., after reviewing the relations of towns to the state from the adoption of the Constitution of 1639, and referring to a provision of that instrument granting to the towns the power to make such orders, rules, and constitutions as may concern their welfare, says:

"That provision with the numerous special provisions then and

¹A. M. Eaton, "The Right to local Self-Government," *Harvard Law Review*, March, 1900.

²R. I. Col. Recs., 2, 148.

since made prescribing their officers, and regulating their meetings and other proceedings, and imposing and prescribing their duties as subordinate municipal corporations, constitute their charters; and thus their powers, instead of being inherent or reserved, have been delegated and controlled by the supreme legislative power of the state from its earliest organization."

Similar views were expressed in *State ex rel. Bulkeley v. Williams*, 68 Conn. 131; *City of Newport v. Horton*, 22 R. I. 196; *Hill v. Boston*, 122 Mass. 344; *Commonwealth v. Roxbury*, 9 Gray, 451, 485; *Agawam v. Hampden*, 130 Mass. 528; *Westbrook v. Deering*, 63 Me. 231; *Bethel v. Albany*, 65 Me. 201; and *People v. Draper*, 15 N. Y. 561, and in several decisions of the United States Supreme Court.

In contrast with these views may be cited those of Judge Cooley in *People v. Hurlbut*, 24 Mich. 108: "The state may mould local institutions according to its views of policy or expediency, but local government is matter of absolute right, and the state cannot take it away." And again in his great work on constitutional limitations, he says:

"The American system is one of complete decentralization, the primary and vital idea of which is that local affairs shall be managed by local authorities, and general affairs only by the central authority."¹

This right of local autonomy is recognized by the legislature in conferring upon towns the power to make by-laws and ordinances for the regulation of their local concerns.

"In these cases," says Judge Cooley, "the legislature is not regarded as delegating its authority, because the regulation of such local affairs as are commonly left to local boards and officers is not understood as properly belonging to the state; and when it interferes, as sometimes it must, to restrain and control the local action, there should be reasons of state policy or danger of local abuse to warrant the interposition."

New England towns, as stated above, although deriving, for the most part, their corporate powers from statutory enactments, are not always incorporated by a formal, legislative act. Perley, J., in *Eastman v. Meredith*, 36 N. H. 284, aptly describes their incorporation in the following language:

"They do not hold their powers ordinarily under any grant from the government to the individual corporation, or by virtue of any contract with the government, or upon any condition, express or implied. They give no assent in their corporate capacity to the laws which impose their public duties or fix their territorial limits. Grants are sometimes made to particular towns or cities of special powers not belonging to them under the general law."

¹Thomas M. Cooley, "Constitutional Limitations," 223.

These grants are sometimes in the form of enabling acts passed by the legislature upon petition of the inhabitants of the town in whose behalf they are enacted. Towns may also accept by formal vote the provisions of particular acts or statutes which thereby become operative for them.

Towns in Vermont are organized under the general law. This may be done when there are twenty families residing in the territory, by a vote of the freemen at a meeting called for the purpose. The inhabitants, or any of them, of an unorganized town containing twenty families forfeit two hundred dollars to the state for each year's neglect to organize.¹

The distinction between towns and cities is stated by Chief Justice Shaw in *Warren v. Charlestown*, 2 Gray (Mass. Rep.) 101, as follows: "The marked and characteristic distinction between a town organization and that of a city is that in the former all the qualified inhabitants meet, deliberate, act and vote in their natural and personal capacities in the exercise of their corporate powers; whereas, under a city government, this is all done by representatives."

The town might be defined as a democracy, the city as a republic. In all the New England states cities are incorporated by legislative act. In Massachusetts, a population of at least twelve thousand is requisite to qualify a town for incorporation as a city.

The change from one status to the other is accomplished in the following manner: First comes an application to the legislature for a city charter by a majority of the inhabitants. This should be adopted at a town meeting legally warned and held for the purpose. A copy of the application is published once in each of three successive weeks in such newspaper or newspapers as may be designated by the secretary of the Commonwealth, the last of which publications should be at least fourteen days before the session of the General Court at which the application is to be presented, and is deposited, with proof of such publication, on or before the first day of January in the office of the secretary, who, if he is satisfied with the proof, transmits the application to the General Court during the first week of the session with an indorsement that the required publication has been made.

The desired form of charter having been thus presented to the legislature, is embodied in a bill and thus enacted. The act of incorporation is then submitted to the inhabitants of the town for adoption, at a time and in a manner prescribed in the act itself. If adopted by the people it only remains for them to organize the new government, which is done by the election and installation of the officers provided for in the instrument. These take over the books,

¹Vt. Sts. 1894, SS. 2978, 2979.

papers, effects, and other property belonging to the town, and assume the duties and responsibilities of their respective offices. As soon as relieved by this action of the new city officers, the officers of the town are discharged from further responsibility.

Except where controlled by the special provisions of their charters, cities are equally subject with towns to the general laws of the state. In Massachusetts, the status of the two classes of municipalities is thus defined:

"Chapter twenty-five and all other laws relating to towns shall apply to cities so far as is consistent with the general or special laws relating thereto; and cities shall be subject to the liabilities, and city councils shall have the powers, of towns; the mayor and aldermen shall have the powers and be subject to the liabilities of selectmen, and the city clerks, treasurers, and other city officers, those of corresponding town officers, if no other provisions are made relative to them."¹

In Rhode Island, the word "town" is declared by statute to include city. In Vermont, not only does the word "town" include city, but the words "selectmen" and "board of civil authority," extend to and include the mayor and aldermen of cities; and the laws applicable to the inhabitants and officers of towns apply to the inhabitants and like officers of all municipal corporations, subject to the provisions of the special laws and acts of incorporation of such municipalities.

A city is, however, sometimes included within a township. This condition exists in Rhode Island and Connecticut. In townships containing cities, the two systems of town and city government exist together; but the importance of the latter is vastly greater than that of the other by reason of the greater population, wealth, and business interests of the city, as compared with those of the town within which it is situated.

In New Haven, which may be taken as a typical example, a full quota of town officers is chosen annually at the town meeting. Seven selectmen, a town agent, town clerk, town treasurer, tax-collector, five assessors, two auditors, three sealers of weights and measures, five pound keepers, five haywards, seven constables, seven surveyors of highways, seven fence viewers, fifty-six justices of the peace, and other minor functionaries, 151 in all, are elected to rule over a territory three-fourths of which is included within the limits of the city.

"The town meeting, the venerated folk-moot of our Teutonic ancestors, has shrunk to smallest proportions. With its vast constituency of over a hundred thousand inhabitants, it draws together only a handful of voters. Not a hundredth part of the citizens

¹Mass. R. L., C. 26, S. 1.

attend it. They hardly know that it is held. The first business done is the election of officers; and on another day, as a business meeting, it hears the reports of officers, authorizes or sanctions expenditures, reviews the estimates of proportion, and determines the annual town-tax of one hundred thousand people. The few individuals who are or have been officially interested in the town government talk over matters in a friendly way and adjourn.

"The newspapers give its transactions a scant notice which some of their subscribers probably read. The town is, therefore, an oligarchy in the bosom of a slumbering democracy."¹

It may here be remarked that in the charters of cities and in the new governments organized under them, the officers with their functions of the original towns reappear. With the exception of the selectmen, who are replaced by the mayor and aldermen, we find the whole roster of town officers. Assessors and collector of taxes, clerk, treasurer, overseers of the poor are all there, and in the main have like duties and powers as in the towns.

The persistence of the town form is strikingly shown by the fact that in the lapse of nearly three centuries, while nearly fifteen hundred towns have been established in New England, there are less than one hundred cities. The causes of this persistence of the town system are various, but a few of the most potent may be briefly mentioned. The spirit of conservatism, which is strong in all of the states of New England, has led the people to cling to their primitive local institutions, which were developed, as has been shown, out of the natural instincts and proved necessities of the earlier time. The further fact that these forms have proved well adapted to the growth and development of the communities which they have served, has helped to keep them so long in use. Another consideration has no doubt had a powerful influence in the continuance of the town system, namely, the dread of the evils of corruption and extravagance which are believed to be inherent in the administration of the city form of government. The people prefer to "let well enough alone," and as long as they can carry on their public affairs under the old system, they refuse to change it. It is true that what have been denominated subordinate municipal corporations have been devised to supplement the defects of the town-meeting government, yet in these forms the essential elements of the town organization have been preserved.

Among these minor, quasi-municipal, corporations may be mentioned boroughs, villages, village districts, fire districts, school districts, and village corporations, which for the most part have their *raison d'être* in the efficiency with which they perform certain functions which the towns of which they form a part could not perform. These corporate forms supply the deficiencies of the town system

¹C. H. Levermore, "Republic of New Haven," 288, 290.

when it fails to meet the wants of a growing population and increasing complication of interests.

These minor or subordinate corporations will be considered in detail.

Since 1801, when the first charter was granted to the borough of Stonington, villages in Connecticut have been incorporated by successive legislatures under that general designation. They are a sort of miniature cities in which the warden and burgesses correspond to mayor and aldermen. The act of incorporation does not take effect until accepted by the vote of the town in which the borough is situated, at a meeting of the electors warned and called in the manner prescribed by the charter.

In general, the purpose served by such incorporation is to secure to the inhabitants of the borough certain rights and privileges which the territory outside of its limits ought not to be taxed for, and the town itself does not possess.

Boroughs are municipal corporations, capable of suing and being sued, of holding and conveying real estate and personal property, have a common seal, and exercise such powers as are conferred by their charters. Their officers consist usually of a warden and six burgesses, who constitute a council with legislative and executive powers, a clerk, bailiff, or sheriff, a treasurer, one or more auditors, two or more assessors, and a collector of taxes, who are elected by the freemen of the borough at their annual meeting.

The warden is the chief executive officer of the borough, presides at meetings of the freemen and of the borough council, and may call such meetings.

The warden and burgesses have authority to enact by-laws and ordinances, subject to the approval of the freemen, upon matters specified in the charter. They may lay out, alter and repair highways, streets and sidewalks; construct and maintain drains and sewers; build or otherwise acquire water works; erect or purchase an electric lighting plant; and, for such purposes, may levy and collect taxes and issue bonds or notes in payment for such public utilities, in accordance with the provisions of the charter.

The inhabitants of the borough continue to be citizens of the town, and as such are entitled to all the privileges and are subject to all the burdens of the other citizens.

In Connecticut, every town has power to form, unite, alter, and dissolve school districts and parts of such districts within its limits; and two or more towns may form school districts of adjoining portions of their respective towns. Every town district is a corporation, and as such has power to sue and be sued, to purchase, receive, hold, and convey real and personal property for school purposes; to build, purchase, hire, and repair schoolhouses, and supply them with fuel,

furniture and other appendages and accommodations; to establish schools of different grades; to employ and pay teachers; to lay taxes and borrow money for all such purposes, and make all lawful agreements and regulations for establishing and conducting schools, not inconsistent with the regulations of the town having jurisdiction of the schools in such district.

In Massachusetts, a town may at a town meeting define the limits of a village or district containing not less than one thousand inhabitants, and authorize it to organize under a name approved by the town for the purpose of erecting and maintaining street lamps, establishing and maintaining libraries, building and maintaining sidewalks, or for employing and paying watchmen and police officers.

Such village or district has a clerk and a prudential committee, and may have a treasurer and such other officers as it may determine, may adopt by-laws to define the manner of calling its meetings, and the duties of its officers, may sue and be sued and, so far as appropriate, is subject to the provisions of the law concerning fire districts. Money voted by the inhabitants may be raised by taxation for the purposes specified, is assessed by the town assessors upon the property of the district or village, and is collected by the collector of the town.

In Maine, village corporations are created by special acts of the legislature, and are authorized to make by-laws for like purposes and with like restrictions as towns. A village corporation in a town where there is no free library may establish a library for the free use of its inhabitants and may assess a corporate tax for its foundation. Their officers consist of a clerk, treasurer, three assessors, and such others as their by-laws provide for, and have like authority with such officers in towns. The right of suffrage is generally limited to persons liable to pay poll-taxes, but in some cases to owners of real estate within the limits of the village.

Villages are generally authorized by their charters to raise taxes for the support of a fire department; to procure a water supply; to build and maintain roads, streets, sidewalks, sewers and sanitary works; to sprinkle and light streets and for schools and cemeteries. Their charters are subject to amendment and may be repealed by the legislature; but acts of repeal would seem to be subject to acceptance by the voters of the town in which the village is situated.

Plantations in Maine, although not corporations, play a large part in the local government of the thinly-settled portions of that state. They are organized under the general law and may contain not exceeding one township. They have a full quota of officers, excepting selectmen, whose duties are performed by the assessors of the plantation. The laws governing town meetings and elections and defining the duties and powers of town officers in general apply to plantations and their officers.

In New Hampshire, village districts with corporate powers may be established within the limits of one or more towns by the selectmen of the town or towns, upon petition of ten or more voters of a village.

The selectmen fix by suitable boundaries a district including the village and such adjacent parts of the town or towns as may seem to them convenient for any or all of the following purposes: the extinguishment of fires, the lighting or sprinkling of streets, the planting and caring for shade and ornamental trees, the supply of water for domestic and fire purposes, the construction and maintenance of sidewalks and main drains or common sewers, and the appointment and employment of watchmen and police officers.

A meeting is called by the selectmen of the voters of the proposed district, and, if they vote to establish it, a name is chosen and necessary officers elected. The district thereupon becomes a body corporate and politic, and has all the powers in relation to the objects for which it was established that towns have or may have in relation to like objects, and all others necessary for the accomplishment of its purposes.

The officers of such districts consist of a moderator, a clerk, three commissioners, a treasurer, and such other officers and agents as the voters may deem necessary for managing the district's affairs, with the same powers and duties in respect to the affairs of the district that the like officers possess and perform in respect to towns.

Taxes for the use of the district are assessed by the selectmen of the town or towns in which the district is situated, and are collected by a collector appointed by the selectmen.

Such districts may exercise the right of eminent domain in acquiring land or easements in land required by them for their purposes; but the selectmen of the town or towns to which they belong fix the damages to be paid to the owner of such land. By a two-thirds vote of its voters, a district may terminate its existence and dispose of its corporate property.

Since 1885, every town in New Hampshire has constituted a single school district. The officers of the district, chosen by the voters at the annual meeting consist of a moderator, a clerk, a school board of three persons, a treasurer, one or more auditors, and such others as the voters may judge necessary for managing the district affairs. They have the usual powers of corporations to sue and be sued, to hold and dispose of real and personal property, and to make necessary contracts for the use of the schools within their limits.

The school board are the executive officers of the district, and are charged with the duty of providing schools at such times in each year as will best subserve the interests of education, and give to all scholars within the district as nearly equal advantages as may be practicable.

They are required to select and hire suitable and competent teachers, and provide fuel for and make necessary repairs of schoolhouses.

and furniture not exceeding in cost five per cent. of the school money. They may regulate the attendance, management, studies, classification and discipline of the schools; prescribe in all mixed schools and all graded schools above primary, and enforce the teaching of, studies having reference to the effect of alcoholic stimulants; may permit or prescribe the study of algebra, geometry and other suitable studies; hold at stated times examinations of candidates for teachers; purchase at the expense of the town text-books and other supplies required for the schools and loan them to the pupils free of charge on such conditions as they may prescribe; furnish necessary blank registers to teachers; visit and examine each school in the district twice in each term, and annually file with the selectmen of the town a detailed report of the work of the schools of their district with statistics of the school population. They are also required to appoint and have charge of truant officers, and fix their compensation.

Incorporated villages in Vermont are either the creatures of the legislature, in which case a charter is granted by a special act to the inhabitants of a certain described district, or they may be organized under the general law. In the latter case, they have their beginning in a petition to the selectmen of the town, signed by a majority of the voters in town meetings residing in a village containing thirty or more houses. The selectmen cause a description of the village to be recorded in the town clerk's office and posted in two or more public places in the village; and thereupon the residents become a body politic and corporate with the powers incident to a public corporation.

The officers of an incorporated village consist of a clerk, five bailiffs or trustees, a treasurer, and a collector of taxes. The trustees are the administrative body, and their duties and powers are like those of the selectmen of towns. The jurisdiction of such corporations under the general law, includes such matters as streets, sidewalks, lanes and commons; slaughter-houses and nuisances; a watch and street lighting; restraint of animals from running at large; the erection and regulation of buildings and their protection against fire, and the establishment and regulation of fire companies. They may also establish and maintain public libraries and may appoint necessary police officers.

Village charters, besides the objects expressed in the general law, frequently include such purposes as the construction and maintenance of sewers and of an electric lighting plant, or the procuring of a water supply, and confer the power to borrow money and issue bonds for such purposes. Authority is also given to make and establish by-laws, ordinances, and regulations touching fire, police, sanitation, and other matters of local administration. The legislature usually reserves the right to alter, amend, or repeal such special acts of incorporation, and provides that they shall not take effect until accepted

by the voters of the incorporated district, or of the town in which it is situated, within a period limited by the act itself. The inhabitants of such villages continue inhabitants of the town the same as if no corporation had been formed, and persons residing within the limits of a village, who are voters in town meetings, are voters in village meetings.

Fire districts may be established in towns in Vermont in a similar manner by the selectmen on application in writing of twenty or more freeholders, such district not exceeding in extent two miles square. The inhabitants of the district who are voters in town meetings thereupon become a body corporate and politic. The officers of a district consist of a clerk, a prudential committee of three persons, a treasurer, and a collector of taxes, who are elected by the voters of the district annually. A chief engineer and assistant engineers may also be chosen.

A district may vote and collect taxes upon polls and estates within its limits for the protection of property in the district against fire, and may acquire in addition to the necessary fire apparatus such real and personal estate, not exceeding in value ten thousand dollars, as may be required for the preservation of such apparatus.

School districts in Vermont are either incorporated by special acts of the legislature, or organized by the voters in unorganized towns or gores at a meeting called for the purpose by the selectmen of an adjoining town, on petition of three voters.

A school district, when legally organized, is a body corporate and politic with the powers of a corporation for maintaining schools in such district, may sue and be sued by its corporate name and may take, hold, and convey real and personal estate. Its officers are a moderator, clerk, collector, treasurer, one or three auditors, and a prudential committee of one or three members.

The prudential committee are the executive officers of the district, and have the management of its affairs. They assess the taxes voted by the district, and make out the rate bills for the same; have the care and control of the schoolhouses and grounds, and provide all things necessary for the schools; employ and remove teachers; provide for instruction in other than the prescribed studies, and determine upon what terms pupils may be received from adjoining districts and towns.

A school district may raise money by taxation for school purposes, may hire or purchase lands or buildings, or build, repair, or furnish schoolhouses, but has not the power to take land by right of eminent domain for such purposes. That power is exercised by the selectmen of the town on application of the school directors or the prudential committee. The selectmen also make division of the public school moneys in the treasury of the town.

Executions upon judgments obtained against any county, town, city, village, school, or fire district may be levied upon the goods and chattels of the inhabitants, who may recover of the county, town, village, or district the sums so paid or levied on their property with twelve per cent. interest.

In Rhode Island all school districts existing on January 1, 1904, were abolished by an act of the General Assembly passed April 17, 1903.

A town may sue or be sued in its corporate name and defend in any court or elsewhere, may submit to arbitration and appoint necessary agents in that behalf. Where an action is given to any town officer, it should generally be brought in the name of the town, and if an action lies against a town officer it should be prosecuted against the town.

In Vermont, towns elect annually an agent to prosecute and defend suits in which the town is interested. In Rhode Island, any inhabitant of a town may appear to defend in any action against it. In that state the law expressly requires all suits brought by a town to be brought in its name, unless otherwise by law specially directed.

They are authorized to make contracts necessary for the exercise of their corporate powers, and for other purposes authorized by law. Among these may be named the disposal of garbage, refuse and offal; the reception, care and treatment by hospitals of persons in need of temporary relief during illness; to pay interest to annuitants on cash gifts to the town; to contribute to the cost of sewers built by any other town or city situated in the water-shed from which the town draws its water supply, to protect such water supply from pollution. It has been recently held in a Massachusetts case that the legislature has no power under the Constitution to confer upon cities or towns authority to establish and maintain municipal fuel or coal yards, or to purchase coal and wood for the purpose of selling it to their inhabitants or others.

A town may take and hold real estate for the public use of the inhabitants, and may convey the same either by a vote of its inhabitants or by a deed of its selectmen or other agents. Real estate may be acquired by a town for public uses by gift or purchase, or by condemnation, in the exercise of the right of eminent domain. It may take, hold and manage real or personal estate in trust for the establishment, support, and maintenance of public schools, libraries, hospitals, cemeteries or for other charitable uses. Religious uses are expressly excluded from such trusts by statute, in Rhode Island.

In Massachusetts, towns are authorized by law to lease, for a term not exceeding five years, a public building or a part thereof, except schoolhouses in actual use as such, to veteran firemen's associations, posts of the Grand Army of the Republic, or camps of the Legion of Spanish Veterans, established in the town.

The unlawful exercise or abuse by a town in Massachusetts, or any of its officers, of corporate power in attempting to raise or expend money, or to incur obligations purporting to bind the town for any unlawful purpose, or in excess of its corporate powers, may be restrained by the supreme or superior court, on petition of ten taxable inhabitants.

A like provision is found in the laws of Maine.

Towns may lay taxes and appropriate money for public uses and purposes, which are generally specified in the statutes granting the authority. The uses and purposes take a wide range in some of the states. Besides the ordinary requirements for schools, roads and bridges, support of the poor, care of public grounds and cemeteries, lighting public ways, water supply, libraries, armories, fire apparatus and the salaries of public officers, they embrace a large variety of other matters.

Among a large number of objects for which appropriations are made in the different states, are included grants of money to encourage volunteer enlistments in case of war or rebellion; to erect monuments to soldiers who have died in the military service of their country; to defray the expense of decorating the graves of soldiers in the late civil war and other wars, and for aid to disabled soldiers and sailors and their families, and the families of the slain; for memorials of firemen who have lost their lives in the fire service; for marking historic spots; for procuring and publishing town records and histories; for celebrating anniversaries of events in the history of the town and nation; to defray the expenses of Old Home Week; to purchase, build, or repair a hearse and hearse-house for the exclusive use of the citizens; to provide drinking-troughs, wells and fountains, and for planting trees in highways, squares and commons; for destroying insect pests; to provide and maintain coasting and skating places; for watering streets; to employ counsel to represent the town at hearings before committees of the legislature; for the detection and arrest of criminals, and all other necessary charges arising in the town.

Appropriations can be made only at legal meetings regularly called, under warrants in which the purposes are specified for which the money is to be voted. In some cases, the amount which a town may appropriate is limited by law. Such appropriations are also subject to the limitations of town indebtedness and the annual tax limit.

Towns have power to make and adopt such orders, by-laws and regulations, not repugnant to law, for the purposes specified in the statutes, as they may judge most conducive to their welfare. They may be adopted at any annual or special meeting of the voters duly called and warned for the purpose. Beginning with such as provide for directing and managing their prudential affairs, preserving peace and good order and maintaining the internal police of the town, they cover a great variety of duties and interests.

Among them may be noted those prescribing the manner of warning town meetings; forbidding the pasturing of cattle or other animals in public places or ways; forbidding the deposit of ashes, filth or rubbish, the piling of wood, timber or stones within the limits of a public way; forbidding the placing of signboards or placards, or fastening horses, cattle or teams on or to the trees in a public way; to prevent the obstruction of the sidewalks with snow or ice; to regulate the use of public sewers and of reservoirs connected with the public water supply; to regulate the width of the tires of vehicles; to regulate the fisheries of clams and oysters and other fisheries; for the care, protection, preservation and use of public cemeteries, parks, commons, libraries and other public institutions; for protection against fires; for the setting of furnaces, ranges and boilers; for the construction of buildings; for the regulation of plumbing, the location of piggeries and slaughter-houses, and the care and discipline of truant children.

Connecticut gives the broadest authority to towns in reference to by-laws, excluding only matters of a criminal nature. In Massachusetts, by-laws do not go into effect unless approved by the attorney-general of the Commonwealth. In Maine, the approval of the county commissioners or of a judge of the supreme judicial court, is required to give them validity.

To the general rule that the voters in town meeting enact and adopt the by-laws which are to regulate their local affairs, the state of Rhode Island furnishes an exception. In that state the power to make ordinances, by-laws and regulations for "the well-ordering, managing, and directing of the prudential affairs and police," is vested in the town councils which are authorized to punish violations with either fine or imprisonment. In other states, only fines can be imposed for breaches of such regulations, which are paid into the town treasury. To the selectmen or town councils, the officers appointed by them, and the town constables, is generally committed the duty of enforcing such ordinances.

This power to regulate their local affairs conferred upon municipal corporations would seem to be subject to the paramount authority of the state to change or annul any by-law made by them. In Massachusetts, an amendment of the Constitution provides that all by-laws made by a municipal or city government shall be subject at all times to annulment by the General Court; and the supreme court of New Hampshire (*State v. Griffin*, 69 N. H. 1) has held that whatever by-laws and ordinances the legislature can lawfully authorize towns and cities to adopt, it has the constitutional power to enact directly.

The ancient practice, established in the Colony of Massachusetts Bay, in 1647, by an order of the General Court, of running and marking at frequent intervals the boundaries between towns, still con-

tinues in most of the New England states. In Connecticut, Maine, and Massachusetts, it is done once in every five years, and in New Hampshire at intervals of seven years. Rhode Island, while making no provision for perambulation, declares by statute that all town and city boundaries shall remain as now established by law, and imposes heavy penalties for the disturbance or removal of a monument marking any such boundary.

In Vermont, the lines are perambulated by the selectmen whenever directed by vote of the town. The work is performed by the selectmen of the contiguous towns or by agents appointed by them, the oldest town taking the initiative.

In Massachusetts, every town is required to adopt a corporate seal; in other states the adoption and use of a seal by the towns is optional.

Every state in New England imposes restraints upon the borrowing power of towns, and fixes limits to the amount of indebtedness beyond which they may not pass without special grant of authority from the legislature.

The debt limit in Maine is fixed by a constitutional amendment, at five per cent. of the last regular valuation of the town. In Massachusetts, the statutory limit is three per cent. of the last preceding valuation of the taxable property of the town; except that a town which acquires a gas or electric lighting plant may incur debt outside the limit mentioned, in payment therefor, to an amount not exceeding five per cent. of such tax valuation. This inhibition does not extend to debts incurred in anticipation of the tax collections of the municipal year, for temporary loans for general purposes, for the payment of land damages, or the general expense of altering railroad grade crossings. Such loans may be authorized by a majority vote, but no other indebtedness exceeding the limit prescribed can be incurred by a town, except by a vote of two-thirds of the voters present and voting at a town meeting.

Special provision is made by law, in Massachusetts, for the establishment by towns of public parks, and the improvement of public grounds and playgrounds, and, for such purposes, for the creation of boards of park commissioners clothed with ample powers to lay out and improve such parks and grounds, including the exercise of the right of eminent domain in the acquisition of land, for the use of such parks and playgrounds. Coupled with the authority granted to towns to enable them to procure a water supply, a lighting plant, lands for parks and playgrounds and other public utilities, are specific limits governing the amounts of money to be borrowed, and the periods of time within which they shall be paid, as well as the times and methods of voting the appropriations for such purposes.

In Rhode Island, no town may incur a debt exceeding three per

centum of its taxable property without special legislative authority, nor assess its ratable property in any one year in excess of one and one-half per cent. of its ratable value, except in payment of its indebtedness or interest thereon, for appropriations to any of the sinking funds, or for extraordinary repairs of damages caused by the elements. Assessments for specific benefits conferred by the opening or improving of public highways or public sewers, are not included within such limitations.

In Connecticut, no town has power to establish, purchase, reconstruct, extend, or enlarge a gas or electric plant until a vote for that purpose shall have been passed by a two-thirds vote at two legal meetings duly called for the purpose, of which meetings the second is called at an interval of not less than one year after the first.

Bonds issued for the purpose must be sold at not less than par, bear interest at not above five per cent., and be payable in a term not exceeding thirty years. An amendment to the state constitution forbids any county, city, town, borough, or other municipality to subscribe to the capital stock, purchase the bonds of or make any donation, or lend its credit, directly or indirectly, to any railroad corporation.

In New Hampshire, authority is given to municipal corporations to issue bonds payable within twenty years at a rate of interest not exceeding six per cent. per annum, for any purpose for which it can raise money or incur a debt; but no bonds may be issued to increase the net indebtedness of such corporation in excess of five per cent. of the value of its taxable property as last appraised for taxation.

In Vermont, towns have authority to aid railroads organized under the general law of the state by issuing bonds or taking capital stock therein, but the liability thus assumed may not exceed eight times the grand list of taxes of the town. Such aid can be extended only when a majority of the taxpayers in number and amount of the grand list have assented in writing to a vote therefor passed at a town meeting duly called and held for that purpose; and the signatures of such assenting majority of the taxpayers must be obtained within one year after the first signature is made.

In all the states of New England, the towns are empowered to refund their lawful indebtedness from time to time, by the issuance of new bonds, notes, or other evidences of debt, and they may also establish sinking funds for the payment of such indebtedness upon terms and conditions prescribed by the statutes governing the same.

In all the states, the property of the inhabitants is subject to the payment of judgments recovered against the town, but in Vermont the property so liable is limited to "goods and chattels."

In general, all forms of property not exempted by law are subject to taxation by town authorities, except the property of corporations

returned by the assessors to the state authorities for taxation; and a considerable percentage of the revenues of towns is derived from taxes imposed by the state upon corporations or corporate franchises, the towns receiving from the state treasury their proportionate part of the amount thus obtained, on account of shares in such corporations owned by their inhabitants.

The systems of assessment and collection of taxes in the different states are similar. A return is required to be made annually by every resident taxpayer upon a blank furnished him by the assessors of the town, in which should be set down the particulars of all his taxable property. The return is made to the assessors, and forms the basis of the assessment made against the person making it. A failure to make a return not only subjects the person who neglects to make it to double taxation, but also deprives him of the right to appeal from the decision of the assessors to a higher authority for an abatement.

In Massachusetts, a fine or imprisonment is the penalty imposed upon one who wilfully makes a false return. In Vermont, a person who wilfully swears falsely to any return or inventory of his property is guilty of perjury and may be punished accordingly. The same rule obtains in Connecticut and New Hampshire. In the latter state, when in the opinion of the selectmen or assessors a person or corporation has made a false or incomplete return, they may ascertain in such way as they may be able, as nearly as practicable, the amount and value of the property for which such person or corporation is taxable, and set down to the delinquent, by way of doomsage, four times as much as the property would be taxable if truly returned and inventoried.

The exemptions from taxation allowed by the several states are much the same, but there are certain features of such exemptions in the different states which are of special interest.

In Massachusetts, the personal property of literary, benevolent, charitable and scientific institutions, and of temperance societies incorporated within the Commonwealth, is exempt, and likewise the real estate owned and occupied by them and their officers for the purposes for which they are incorporated; but such real or personal property is not exempt, if any of the income or profits of the business of such corporation is divided among the stockholders or members, or is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes, nor for any year in which the corporation omits to bring in to the assessors the list and statement required by law.

As an instance of the application of the rule, the decision in *Cambridge v. County Commissioners*, 114 Mass. 339, may be cited. In that case it was held that the upper stories of Holyoke House, a

building owned by Harvard College, appropriated for students and used for purposes within the college charter, were exempt from taxation; but the lower story, which was used for other purposes, was not exempt.

That state also exempts houses of religious worship owned by or held in trust for the use of any religious organization, its pews and furniture; but the exemption does not extend to portions of such houses appropriated for purposes other than religious worship or instruction; the property to the amount of five hundred dollars of a widow, or of an unmarried woman above the age of twenty-one years, and of a person above the age of seventy-five years, or of any minor whose father is deceased: *provided* the whole estate of such person does not exceed in value the sum of \$1,000, exclusive of property otherwise exempted; the property of soldiers and sailors who served in the military or naval service of the United States in the war of the rebellion, who were honorably discharged therefrom, and who by reason of injury received or disease contracted while in such service, and in the line of duty, have become permanently incapacitated for the performance of manual labor, and the wives or widows of such soldiers or sailors: *provided* that the whole estate of the persons so exempted does not exceed in value the sum of \$5,000, that only \$2,000 shall be exempted to any one family, and that the property of the family does not exceed \$5,000.

Maine exempts the personal property of all literary and scientific institutions; the real and personal property of all benevolent and charitable institutions incorporated by the state; the real estate of all literary and scientific institutions occupied by them for their own purposes, or by any officer as a residence; houses of religious worship including vestries and the pews and furniture within the same, except for parochial purposes; and property held by a religious society as a parsonage not exceeding \$6,000 in value, from which no rent is received, and personal property not exceeding \$6,000 in value; the polls and estates of persons, who by reason of age, infirmity and poverty, are in the judgment of the assessors unable to contribute towards the public charges; and the polls of all soldiers and sailors who receive state pensions.

Vermont allows the following exemptions: Real and personal estate granted, sequestered, or used for public, pious, or charitable uses; real and personal estate used for the purposes of a public or private circulating library, open to the public and not used for profit; lands leased by towns for educational purposes, and lands owned or leased by colleges, academies, or other public schools, or leased for the support of the gospel; and the polls of the male inhabitants of the state who while in the service of the United States in the war of the rebellion lost an arm, leg, or eyesight, or contracted an equivalent

disability, to be determined by the degree of disability for which such person is pensioned, or who having been honorably discharged has no taxable estate.

New Hampshire exempts houses of public worship, \$2,500 of the value of parsonages owned by religious societies and occupied by their pastors, schoolhouses, seminaries of learning, and the real estate and personal property of charitable associations, corporations, and societies devoted to the uses and purposes of public charity.

Rhode Island grants the following exemptions: Buildings for religious worship and the land upon which they stand and immediately surrounding them to an extent not exceeding one acre, so far as they are occupied and used exclusively for religious or educational purposes; the buildings and personal estate owned by a corporation used for a school, academy, or seminary of learning, and of any incorporated, public, charitable institution, and land not exceeding one acre when used exclusively for educational purposes; the estates, persons and families of the president and professors for the time being of Brown University, for not more than \$10,000 for each such officer, his estate, person and family included; the property held for a library, and certain other philanthropic purposes including funds for hospitals or for the purpose of public education.

Connecticut exempts buildings or portions of buildings exclusively occupied as colleges, academies, churches, public schoolhouses or infirmaries; parsonages, of any ecclesiastical society to the value of \$5,000, while used solely as such; buildings belonging to and used exclusively for scientific, literary, benevolent or ecclesiastical societies, excluding therefrom real estate conveyed by any ecclesiastical society, or public or charitable institution in perpetual alienation, and other lands of any educational, benevolent, or ecclesiastical corporation, or association which are leased or used for other purposes than the specific purposes of such corporation or association, and lands granted and given for the maintenance of the ministry of the gospel while leased; the property to the amount of \$3,000 of any pensioned soldier, sailor, or marine of the United States, who while in service lost a leg, or arm or suffered disabilities, which by the rules of the United States pension office are considered equivalent to such loss; the property to the amount of \$1,000 of every resident of the state who has served in the army, navy, marine corps, or revenue marine service of the United States in time of war, and received honorable discharge therefrom; and property to the like amount of the widow or the widowed mother residing in the state, of every person who so served and died in the service, or after receiving honorable discharge from the service.

Towns and cities contribute to the revenues of the state such amounts in the form of taxes as are imposed by acts of apportionment passed from time to time by the legislature. This apportion-

ment is based upon the number of ratable polls and the taxable property in each town or city as returned by its assessors to the state authorities. Such returns are in some of the states revised and corrected by boards of assessors, or of equalization. The methods of assessment of such taxes vary in the different states.

In Vermont, abstracts of the tax list made by the listers and certified by the town clerk, are returned by the clerk to the secretary of state, who from the abstracts so returned prepares a list for the state taxes and transmits a copy of it to the state treasurer. The latter issues his warrant to the first constable or collector of taxes of the several towns for collection.

In New Hampshire, the selectmen of each town annually transmit to the secretary of state a certificate showing the number and total valuation of polls and ratable estates of the town, the amount of taxes levied and the rate of taxation of the year. These certificates are laid by the secretary of state before the state board of equalization, who equalize the valuations in all the towns of the state upon the same basis, so as to make them uniform, in order that the public taxes that may be apportioned among the towns in accordance therewith may be equal and just between them.

In Massachusetts, the amount of tax to be paid by each town and city is fixed by an act of the legislature in accordance with an apportionment by the tax commissioner prepared and reported to the General Court once in every three years. This apportionment is based upon the returns of the local assessors made up and deposited by them triennially with the secretary of the Commonwealth, showing the ratable polls and estates of their towns.

In Connecticut, the state treasurer, comptroller and tax commissioner constitute the board of equalization, whose duty it is so to adjust the assessment list of each town that it shall conform to the actual cash value of the property. Such lists when so equalized constitute the general list of the state upon which the state taxes are imposed by acts of the legislature. The selectmen are required to cause the amount of the state tax imposed upon their town by the General Assembly to be paid on or before a day named, and in case the tax is not paid at such time, it is the duty of the treasurer of the state to issue an execution against the estate of those officers, returnable in sixty days, for the sum due. If that execution is returned unsatisfied, the treasurer is required to issue another for the sum remaining due and the costs accrued, against the estates of the inhabitants of the town.

In Rhode Island, the valuations of the ratable property of the towns and the rate to be assessed are both fixed by statute. The town assessors assess the amount required upon the taxable property of the town, and the state treasurer issues his warrant for the collection

of the state taxes upon the lists of assessments returned to him by the several towns. In case of failure of the town officers to assess and collect the tax, the town forfeits double the amount of the tax, to be recovered by the general treasurer and collected on execution from the property of the town or of its inhabitants.

In Maine, a board of state assessors chosen by the legislature is charged with the duty of fixing the valuations of the taxable property of the several towns and of equalizing the state tax among them. The local assessors are required to make annual returns to this board of the ratable polls and estates of their towns; and the board equalizes and adjusts the assessment lists so furnished, adding to or deducting from each such amount as will make it equal to the full market value. The board makes and files with the secretary of state a detailed report of the assessed valuation for each town, township and all other lots and parcels of land not included in any township, and the aggregate amount for each county, throughout the entire state, before the first day of December preceding the regular sessions of the legislature. The valuation thus determined forms the basis for the computation and apportionment of the state and county taxes until the next biennial assessment and equalization.

The state treasurer issues his warrant for the amount due from each town, to the local collector of taxes, who collects and pays it over to the town treasurer. State taxes may be collected from delinquent towns on warrants issued by the state treasurer to the sheriff of the county, requiring him to levy by distress and sale upon the real and personal property of any of the inhabitants of the town.

Education has always been one of the chief concerns of the New England states. In 1636, the college which was afterwards to bear the name of John Harvard was established at Cambridge by the General Court. From the first it was regarded as the foster child of the colony, and was in part supported by grants of money and lands. Later it received more or less support from the Commonwealth, the last appropriation, in 1814, being a tax laid upon the Massachusetts bank, which yielded to the college ten thousand dollars per annum for the period of ten years. In the contributions made by Massachusetts towards the maintenance of Harvard in the colonial and provincial periods, Connecticut, New Haven and Plymouth bore their part.

The example of Massachusetts was not without influence upon the other colonies. In New Haven on December 26, 1641, it was ordered "that a free school shall be set up in this town," and the General Court of Connecticut established a free school system in 1644. The need of a college for New Haven had begun to be felt as early as 1641, and a project for the founding of a college was conceived at that time; but partly owing to the objections of leading men of the Bay, who urged that all the resources of all New England were barely

enough to support Harvard, no serious attempt to found another institution of learning was made until 1698. In that year, the general synod of the colony undertook the work, intending to call the new college "the school of the church." The real founding, however, of the school, which has since grown into Yale University, was begun at a meeting in Branford in 1700 when the ministers made contributions of books, in all about forty volumes, for the purpose.

A like interest in education was felt in Plymouth. In 1640, a plan for an academy or college at Jones' River was conceived; and it is claimed that the Plymouth town meeting in 1672, in authorizing the application of thirty-three pounds out of the rentals of the common lands to the support of a common school, established by law the first free school in New England.¹

In 1640, Newport invited Robert Lenthal to teach a school in that town, and as an inducement voted to give a hundred acres of land to him and his heirs and four more for a house lot. Providence, in 1663, reserved a hundred acres of upland and six acres of meadow for the founding of a public school. In the other colonies various movements were begun for the promotion of education among the towns, but Massachusetts took the lead in laying the foundations of a general system of public schools.

The foundation of the free school system was begun early in Boston. Governor Winthrop wrote in his diary that interest in the establishment of free schools was already developing in Roxbury and in other places, and the following order appears in the records of the General Court, "10th day of ye 11th month of 1641. It is ordered that Deare Island shall be improoved for the maintenance of a Free School for the Towne and such occasions as ye Townsmen for the time being shall think meete, the sayd Schoole being sufficiently Provided for."

Boston too had the advantage of the teaching and influence of that famous schoolmaster Ezekiel Cheever, among whose pupils was the more famous Cotton Mather, who wrote of him the following quaint lines:

"He lived, and to vast age no illness knew
Till time's scythe waiting for him rusty grew;
He lived and wrought, his labors were immense,
But ne'er declin'd to praeter-perfect tense."

It was of him also that Governor Hutchinson wrote: "Venerable not merely for his great age (xciv) but for having been the school-master of most of the principal men who were then upon the stage." He died August 21, 1708.

A law enacted by the General Court, in 1642, enjoined universal education, but did not make it **free** nor did it impose any penalty upon municipal corporations for neglecting to maintain a school.

¹John A. Goodwin, "The Pilgrim Republic," 496.

The first order made in the colony of Massachusetts Bay for the establishment of free public schools is of peculiar interest. It is dated November 11 (21), 1647, and runs as follows:

“It being one chief project of that old deluder Satan, to keep men from the knowledge of the Scriptures, as in former times by keeping them in an unknown tongue; so in these latter times by persuading from the use of tongues, that so at least the true sense and meaning of the original might be clouded by false glosses of saint-seeming deceivers,—that learning may not be buried in the grave of our fathers in the Church and Commonwealth, the Lord assisting our endeavors,—

“It is therefore Ordered, that every township in this jurisdiction, after the Lord hath increased them to the number of fifty householders, shall then forthwith appoint one within their town to teach all such children as shall resort to him to write and read, whose wages shall be paid either by the parents or masters of such children, or by the inhabitants in general, by way of supply, as the major part of those that order the prudentials of the town shall appoint; provided those that send their children be not oppressed by paying much more than they can have them taught for in other towns.

“And it is further Ordered, that when any town shall increase to the number of one hundred families or householders, they shall set up a Grammar School, the master thereof being able to instruct youth so far as they may be fitted for the University; provided, that if any town neglect the performance hereof above one year, that every such town shall pay five pounds to the next school till they shall perform this Order.”

The first enactment which required a definite amount of schooling each year was that of June 25, 1789, which provided that every town or district within the Commonwealth containing fifty families or householders should be provided with a school master, or school masters, of good morals, to teach children to read and write and to instruct them in the English language as well as in arithmetic, orthography, and decent behaviour, for such period as was equivalent to six months for one school in each year. Larger towns or districts were required to have schools and masters for proportionate periods.

Every town or district containing two hundred families or householders was required to be provided with a master well instructed in the Latin, Greek and English languages, in addition to a master to instruct in English. Towns neglecting to procure and support school masters as required by law were subjected to penalties ranging from ten to thirty pounds annually according to their population.

No person could be employed as a school master unless he had received an education in some college or university, and before entering upon such employment produced a certificate from a learned

minister well skilled in the Greek and Latin languages, settled in the town or place where the school was to be kept, or two other such ministers in the vicinity, that he was well qualified and able to instruct in a grammar school, or that he was of competent skill in the Greek and Latin languages. No settled minister could be accepted. as a school master within the intent of the act. This inhibition was not long after repealed.

By the act of June 13, 1817, school districts in Massachusetts were declared to be corporations, with power to sue and be sued, to take and hold real and personal property and to make contracts for the purposes for which they were organized. Their corporate powers were enlarged by the act of March 10, 1827. Under this latter act, towns were empowered to choose school committees to have charge of all public schools supported by the town. A prudential committee for each district was also provided. Provision was made in the act for the purchase at the expense of the town of school books, which were to be provided in case the parents or guardians of the scholars did not furnish them; but the expense of such books was to be added to the taxes of those whose children were provided with them for the next year.

The development of the systems of public education in other states has been very similar to that of Massachusetts. There are, however, peculiar features in the different states which are worthy of notice.

In all the states, committees elected by the towns, have the management of the public schools. In Connecticut, there are two plans of administration. Under one plan, a board of school visitors is given charge of all the schools of the town. The other plan obtains in cases where towns abolish the school districts and assume control of the schools, the town constituting a single district. In that case, a committee is chosen, which has all the powers of high school and district committees and boards of school visitors. In Maine and Vermont, the district system has been abolished and each town constitutes but one district for school purposes.

School committees, in general, have plenary powers. They may hire and dismiss teachers and determine their qualifications. They may designate the school to which a pupil may be admitted, and may exclude pupils, subject only to the statutory regulations as to ages and periods of attendance. They may prescribe the studies to be pursued, except in certain states where certain studies are required by law, and may select the text-books to be used by the pupils. They may employ superintendents and fix their compensation. They have charge of the school buildings and other school property of the town, except in Vermont where a prudential committee performs that duty, and, generally, have control of the school funds appropriated by the town or contributed by the state in aid of the schools.

All towns are required, under heavy penalties for failure to do so, to tax themselves for the support and maintenance of schools. Vermont prescribes a certain percentage of the grand list of every town which must be appropriated annually for school purposes, and imposes a state tax of five cents in the dollar to be assessed annually upon the grand list for the support of public schools. This tax is apportioned by the state treasurer among the towns, cities, unorganized towns and gores, according to their respective grand lists.

Maine requires every town to raise and expend annually not less than eighty cents for each inhabitant, under penalty of forfeiting not less than twice nor more than four times the amount of its deficiency in that behalf. Connecticut appropriates annually two dollars and twenty-five cents for each child between the ages of four and sixteen years, payable from the civil list funds of the state, to be divided *pro rata* among the several towns according to the number of children between the designated ages.

The school year in the different states varies from twenty to thirty-six weeks in length, New Hampshire having the shortest and Connecticut the longest period.

In all the states, except Rhode Island, the attendance of children of school age is compulsory, and parents or guardians are subject to a fine for non-compliance with this requirement. In Connecticut, the school age is from seven to sixteen years; in Maine, from seven to fifteen; in Vermont, from eight to fifteen; in New Hampshire, from six to sixteen; and in Massachusetts, from seven to fourteen years, and includes all children under sixteen years of age who cannot read at sight and write simple sentences in the English language. Attendance upon private schools approved by the authorities is accepted as an equivalent for attendance at the public schools in certain cases.

Towns are required in all the states to furnish free text-books at the public expense as well as books of reference, maps, and other apparatus, materials and supplies necessary for the pursuit of the different branches of instruction. In several of the states, the law requires the establishment of high schools, evening schools, and schools for manual training. Provision is also made by law for the conveyance at the expense of the town of pupils living at remote distances to and from the schools.

In Massachusetts, the law requires that a portion of the Bible shall be read daily in the public schools without written note or oral comment; but pupils upon written request of their parents, on the ground that they have conscientious scruples against it, may be excused from taking part in such reading.

In some of the states, the law requires that the national flag shall be displayed upon the school buildings while the schools are in ses-

sion, and for patriotic exercises upon Memorial Day, in commemoration of the citizen soldiers of the state who died in the service of their country during the War of the Rebellion. In Rhode Island, the twelfth day of February, known as Grand Army Flag Day, is also commemorated in honor of the birthday of Abraham Lincoln.

The public library is an important feature in the life of the New England towns. Beginning at Peterborough, New Hampshire, when in 1833 the first free public library in this country was founded, town libraries have sprung up all over New England. Massachusetts leads in the number of such libraries as well as in the extent and value of their collections of books, there being four hundred and eighty-seven now in the Bay State, containing in round numbers nine million volumes. There are less than a score of towns in that state without free public libraries supported wholly or in part by public funds.

In the other states of New England there is scarcely less interest shown in the establishment and maintenance of libraries for the people. Towns are permitted to establish libraries and to provide by taxation for their support and maintenance.

In Maine, a sum equal to ten per cent. of the amount expended annually by any town is paid annually from the state treasury for the use of the library, and the state librarian is authorized to donate from the state library to any town having no free public library owned or controlled by the town, books purchased for that purpose not exceeding fifty per cent. in value of the books and documents purchased by the town for the purpose of founding a free public library. But no town can receive such a donation until it shall have raised and appropriated not less than one hundred dollars for the purchase of books and has provided for the care, custody, and distribution of its own books and of those to be donated by the state.

Similar provisions for state aid are found in the other states.

Libraries are managed by boards of trustees or directors elected by the town. The board usually consists of three or more members who commonly serve without pay. They generally have authority to make all needful rules for the government of the library and the care and use of its books and collections. They have the custody of its funds and other property, except where the town by a by-law or vote makes some other provision. The town treasurer usually acts as the treasurer of the board. All gifts and bequests for the use of such libraries are taken and held by the town under the provisions of the law. Among the sources of revenue applied to the support and maintenance of libraries in Massachusetts are the fees derived from the issue of licenses for dogs.

The maintenance of highways and bridges calls for the largest expenditures, with the exception of the schools, of any of the depart-

ments of town government. The care of the public ways is commonly intrusted to surveyors of highways or road commissioners, but a superintendent of streets is sometimes employed in the larger towns. The town is usually divided into highway districts either by a vote at the annual town meeting, or by the selectmen, or, in Rhode Island, by the town council, and the work of repair is assigned to the different highway surveyors elected or appointed for such districts.

The method, which formerly obtained, of allowing the inhabitants to work out their highway taxes has fallen largely into disuse, except in the sparsely settled districts, mainly because of the growing demand for better roads, which can be secured only by skilled labor and superintendence both in their construction and repair, such as could not be had under the old system.

A great impetus for the improvement of public ways has been given in recent years by the practice that has grown up of granting state aid to towns in the building of their highways. In Massachusetts, a state highway commission has been created upon whom authority is conferred to superintend the building of state highways. Under the direction of this commission, large amounts of money have been expended in the construction of sections of highway along the great routes of public travel. The towns through which such highways are built contribute a certain proportion of the cost, and a percentage of the amount paid by the state is repaid by the county in which the highway is situated.

As a rule, where state aid is given for the construction of highways, although there is incidental supervision by the state in their construction and maintenance, the general control of these highways remains with the local municipal authorities, but in Massachusetts, the highway commission exercises complete and permanent control over them.

In Maine, state roads are established by the county commissioners upon the request of the municipal officers of any town, and the town may receive from the state one-half of the amount actually expended in the permanent improvement of the road upon conditions prescribed by the statute. In Vermont, a state highway tax is assessed annually upon the grand list of towns for the support of highways, and the state treasurer apportions to each town the amount to be paid by it. The tax so raised is repaid to the town upon the basis of its road mileage, as ascertained and certified by the selectmen, the amount being in accordance with the ratio of such mileage to the total mileage of the state.

In New Hampshire, under the act of 1905, state aid is granted to towns in accordance with their valuation, and the money so contributed by the state, together with the amount set apart by the town for the improvement of highways, constitutes a joint fund to be used

outside of the compact portion of the town. The work performed is done in accordance with specifications provided by the governor and council, and all highways improved by the expenditure of such joint funds are required to be maintained by the town within which they are located at its own expense, and to the satisfaction of the governor and council.

In Connecticut, a somewhat similar plan is pursued in the construction of improved roads, called "public roads," which include only the main highways leading from one town to another. Contributions towards the cost of such roads are made from the state treasury based upon certificates of the selectmen of the cost of construction filed by them with the state highway commissioner. The amount so contributed is, as in the other cases mentioned, limited to a percentage of the sums expended by the town. The town in which the road has been built is required to keep it in proper repair to the acceptance of the highway commissioner.

In Rhode Island, by an act of the General Assembly passed in 1902, a state board of public roads was created with authority to construct state roads. All roads improved or constructed under its provisions are to be known as state roads, and kept in good repair from the time of such construction and improvement, at the expense of the state, under the supervision of the state board. The towns are required to keep such roads clear of snow and ice.

The power to grant locations for street railways in town ways is vested in the selectmen, whose decisions upon the matter are final. They also have control of the construction of the roadbed, the erection of poles and wires, and the determination of all other matters of equipment of the road so far as they affect the highway. Appeals lie from the action of the selectmen in certain cases to the board of railroad commissioners, or the courts, in some of the states, upon questions relating to construction and maintenance.

They may also regulate the speed and mode of operation of such railways in their towns, subject only to such regulations as are prescribed by law. They have power to cancel a location and to remove the tracks from a road in case of disuse or failure on the part of the street railway corporation to comply with the conditions imposed when the location was granted.

In general, the municipal officers have like authority in relation to telegraph, telephone and electric light companies, in the use of the public ways. They have full control over the placing, erection, and maintenance of wires, conductors, fixtures, structures or apparatus, and the relocation or removal of the same, and may designate the kind, quality and finish of such equipment.

The public common, which is found in the older towns of New England, is the survival of the common lands held originally for the

use of the inhabitants for wood, tillage or pasturage, which have shrunk to the dimensions of a small grass plot upon which front the ancient church and the survivors of the oldest houses of the village. They are usually surrounded with old trees, and frequently contain a monument, commemorating those who fell in the Colonial, or Revolutionary Wars, or in the War of the Rebellion. They are regarded as sacred spots, never to be alienated, nor invaded even for the erection of buildings for public use.

Towns have power to establish parks within their limits, and may acquire land for such purposes either by purchase or in the exercise of the right of eminent domain. Such additions are, however, made under special provisions of the statutes or by special grants of power from the legislature. Authority is in such cases given for the creation of boards of park commissioners to be chosen by the town. In the absence of such boards, the care of public commons and grounds is given by law to the selectmen or road commissioners.

In recent years the office of tree warden has been created in several of the states. In Massachusetts and Connecticut, this officer is elected at the annual town meeting; in New Hampshire, he is appointed by the selectmen. His duties are to take care of shade and ornamental trees in public ways or grounds; and he is required to mark by means of iron spikes or nails such trees as he thinks should be controlled by the municipality. No tree, however, can be removed from any public grounds or highway without notice and a public hearing.

Provision for the care of the indigent and insane has from the earliest period been a more or less heavy charge upon the public revenues. The duty is imposed by law upon all towns to relieve and support poor and indigent persons lawfully settled therein whenever they stand in need, and to afford temporary relief to strangers.

The rules for the acquisition of settlements by paupers in the different states, although varying greatly in detail, are based upon a few simple principles. The fundamental fact is the residence of the pauper or his ancestor in the town in which his settlement is gained. The residence required must be supplemented by the payment of a poll tax or other taxes assessed upon his estate during the period of such residence; and, coupled with this, is the further requirement that no public relief or supplies have been furnished to the pauper or his family during such period. A wife takes the settlement of her husband and loses it in case of divorce from him. Legitimate children have the settlement of their father or his ancestor, and illegitimate children the settlement of their mother, or of her ancestor. A settlement once acquired in a town is not lost until another has been gained elsewhere. A person can have but one settlement.

In Vermont, the law of settlements has been greatly simplified by recent enactments. In that state the one simple test applied to cases.

of application for relief is residence in the town for three years without receiving assistance from the town. The only exception is found in cases of application for immediate relief to transient persons, which the law requires the overseer of the poor to grant without regard to the residence of the applicant.

In all the states, the overseers of the poor are required to give immediate relief to all persons falling into distress or want on account of poverty or any misfortune and are without means of self-support. Any expense thus incurred may be recovered in the first instance from the estate of the person relieved, if any is discovered, or from the relatives of such person, if able to respond; otherwise, from the town in which he has his legal settlement; and if it is found that he has no such settlement in the state, the town upon application is reimbursed for such outlays from the state treasury.

Among the peculiar and interesting ways of succoring the self-respecting poor is that found in Concord, Massachusetts. The origin of the custom has been lost from living memory, but it is believed that it originated with a gift of funds to the town from some generous inhabitant for the use of the so-called "Silent Poor." The Silent Poor fund has for many years been administered by trustees chosen by the town. The fund, which has been increased by additions in recent years, yields a considerable sum which is supplemented by annual appropriations made by the town and by a collection taken up once a year in the meeting-house of the First Parish. This annual collection appears to be a survival of the time when the town and parish were one. In the distribution of the benefits thus provided, absolute secrecy is preserved as to the beneficiaries, who themselves do not always know the source from which the help comes.

The care and supervision of the public health are intrusted to local boards of health. The selectmen sometimes act as such.

In Vermont, the state board of health appoints a health officer for each town, who with the selectmen constitute a board of health. In Maine, a well-educated physician may be appointed as the sanitary adviser and executive officer of the board. The presence upon the board of a practising physician, when practicable, is required in New Hampshire. In Massachusetts, towns may elect boards of health of three persons and one of these, in towns having more than five thousand inhabitants, is required to be a physician, unless the board is composed of selectmen. In Connecticut, the county health officer appoints for each town some discreet person learned in medical or sanitary science to be health officer for the town, except in towns containing a city or borough, whose limits are coterminous with the limits of the town.

In Rhode Island, the town council is *ex officio* the board of health, and may make such rules and regulations, not repugnant to law, as

they judge proper for the preservation of the health of the inhabitants, and may inflict severe penalties for breaches of the same. A fine of not exceeding three hundred dollars or six months' imprisonment may be imposed for a single offense. The council is required to appoint annually a health officer.

The statutes of the different states prescribe in great detail the duties and powers of such boards. It is impracticable here to do more than summarize the more important ones.

In Massachusetts, their jurisdiction extends to the sanitation of bakeries, the supervision of hospitals, the location and prevention of cases of contagious or infectious diseases, the examination into all nuisances, sources of filth and causes of sickness within the town, and the removal and abatement of the same; the assignment of places for the exercise of offensive trades; slaughter-houses, and rendering establishments; the supervision of drainage, and protection of water supply, both public and private, from pollution; the regulation of quarantine for vessels in seaport towns, and provision for the vaccination of children and other persons for the prevention of smallpox.

In the other states of New England, their duties and powers embrace substantially the same subjects as those enumerated for Massachusetts. When dealing with epidemics and other matters of general rather than local interest, they act under the direction of the state authorities.

The early town meetings were occupied with a great variety of matters which find no place in the meetings of to-day; their functions were both legislative and judicial. In 1637, Joshua Verin was brought before a Providence town meeting, tried, convicted, and disfranchised for restraining liberty of conscience. A town meeting of Portsmouth, R. I., condemned and divided the property of an absconding debtor. The first recorded act of a town meeting at Hartford was the trial and condemnation to death of a Pequot Indian for several murders which he had committed.

Prof. James K. Hosmer, in his *Life of Samuel Adams*, says of the records of Boston: "Whoever pores over these records, on the yellow paper, in the faded ink, as it came from the pens of the ancient town clerks, will find that for the first hundred years the freemen are occupied for the most part with their local concerns. How the famous cowpaths pass through the phases of their evolution,—footway, country-lane, high-road,—until at length they become the streets and receive dignified names; what ground shall be taken for burying-places, and how it shall be fenced as the little settlement gradually covers the whole peninsula; how the neck, then a very consumptive-looking neck, not goitred by a ward or two of brick-and-mortar-covered territory, may be protected, so that it may not be guillotined by some sharp north-easter; what precautions shall be taken against the spread of smallpox; who shall see to it that dirt

shall not be thrown into the town docks; that inquiry shall be made whether Latin may not be better taught in the public schools — such topics as these are considered.”¹

The parish and the town being practically one in the early years, the cares and the “seating of the meeting house,” and provision for the support of the minister were among the duties of the freemen. There were at first no pews, and the meeting house was not regarded as a sacred edifice. It underwent hard usage, and was frequently out of repair. Occasionally it was used as a place of storage for the town’s stock of gunpowder. This was the case in Braintree, Massachusetts, and when the house took fire in 1752 and the powder blew up, it helped to complete the destruction of the building. The exclusion of dogs from the meeting house was also a matter of public concern. In the Dedham (Mass.) town records under date of “12-11-1673,” is the following entry:

“Agreed with Nat Heaton to whip doges out of the Meeting House and to goe upon errands for the reverend elders, referring to the church; and to take care of cushin and glass, till further order be taken and for his paynes herein he is to receive of the Towne ten shillings for an whole year.”²

Besides the necessary attention to local affairs the towns were required to elect deputies to the General Court; and it was their custom for more than a hundred years to instruct their deputies, sometimes with great minuteness, in their duties by the mouth of some spokesman of approved ability.

In the town of Boston it was Samuel Adams who in 1764 delivered the town’s charge to its deputies. In his address to them after saying that the townsmen “have delegated to you the power of acting in their publick concerns in general as your own prudence shall direct you,” he took care to qualify the concession by adding: “Always reserving to themselves the Constitutional Right of expressing their mind and giving you such Instruction upon particular Matters as they at any time shall judge proper.”

In the case of Adams himself, when serving as deputy, it may well be supposed that the instructions given him by the town meeting were largely a work of supererogation. It was he perhaps more than any other that moulded the public opinion of the town. In his fertile brain were shaped the measures and policies that came to be favored by his fellow citizens. That was the prerogative then as it is now of the king of the town meeting. In the town meeting more than anywhere else the masterful man dominates the mass of men.

The New England town meeting of to-day is the outgrowth of more than two centuries and a half of experience of democratic rule. It

¹James K. Hosmer, “Samuel Adams,” 4 *et seq.*

²Charles F. Adams, “Three Episodes of Massachusetts History,” II, 743 *et seq.*

differs materially, however, from those earliest assemblies of the people which met at first fortnightly and later once a month, in the Meeting-House, a barn, or private dwelling, to consider the neighborhood affairs of a handful of settlers.

The first meetings were called together with little formality, at first by the beating of a drum, and later by the ringing of a bell. Attendance was compulsory, and both absence and tardiness were punished by fines. The records of Hatfield, Connecticut, show the current usage. They disclose that it was voted "at the side meetings that when there is a meeting legally warned, whoever shall not come shall forfeit one shilling, whoever shall come a half hour late, six pence, whoever shall depart before the close, six pence."

The earliest town meeting of which we have any record was held at New Plymouth, April 2, 1621, when John Carver was re-elected Governor. One of the most important of the early meetings, perhaps, was held in New Haven on June 4, 1639, in Robert Newman's barn, where "all the free planters assembled together in a general meetinge to consult about settling civill Government according to God and about the nomination of persons fittest for the foundation worke of a church which was intended to be gathered at Quinipieck." At this meeting was framed the "Fundamentall Agreement," the written constitution of New Haven Colony; and the names of the "pillars" of the new church were also "propounded" — a memorable occasion which signalized the founding of a new state and the setting up of a new temple to the Almighty, in the wilderness.

The personal attendance of the freemen at town meetings, required in the earliest period, was later in several of the colonies excused and proxies admitted instead. In May, 1670, the General Assembly of Connecticut enacted that the freemen who formerly had been obliged to go to Hartford to attend the General Court for Elections, might be represented by proxy. Accordingly, local "proxy-takings," as they were called, were held as a part of the business of the town meetings; and the proxies for the coming election at Hartford of Governor, Deputy Governor and magistrates or assistants, were taken after the deputies to the General Court had been chosen.

A similar practice obtained in the Bay colony, where the freemen who did not attend in person for the annual election in Boston of the General Officers were permitted to give their ballots, in their home towns, to their deputy, in the constable's presence, which being sealed were transmitted to the election table in Boston with a list of the freemen's names who had so voted.²

In Rhode Island colony as early as 1639-40, proxy voting was

¹H. B. Adams, "Germanic Origin of New England Towns," *Johns Hopkins Univ. Studies* I, 33.

²H. D. Williamson, "History of Maine," I, 372.

allowed. Orders were passed by the General Assembly in 1647 and 1664 permitting the freemen to send proxies to a General Court for Elections, the order for the latter year providing that persons who did not go to Newport might give their votes sealed up into the hands of a magistrate at any regular town meeting to be delivered to the Executive at the Court of Election in Newport, there to be opened and counted.¹

The burden of caring for the multifarious interests of the community in these popular assemblies bore heavily upon the freemen, and it was soon seen to be necessary to depute to a smaller body the authority which was but clumsily and inefficiently exercised by the town court. It was then that a resort was had to a board of "selectmen," or "townsmen," as they were sometimes called.

One of the first towns to adopt this course was Dorchester, Massachusetts, in whose records under date of Monday, Oct. 8, 1633, is the following entry, which is worth quoting in full, as showing the persistence of the legislative habit and a certain reluctance about surrendering to the new functionaries the powers of the monthly meeting.

"DORCHESTER, MASS., *Monday, Oct. 8, 1633.*

"Ordered that for the general good and well ordering of the affairs of the plantation there shall be every Monday before the Court by 8 o'clock A. M. and presently by the beating of the drum, a general meeting of the inhabitants of the plantation at the meetinghouse there to settle and set down such orders as may tend to the general good as aforesaid, and every man to be bound thereby without gain-saying or resistance. It is also agreed that there shall be twelve men selected out of the company that may, or the greatest part of them, meet as aforesaid to determine as aforesaid; yet so far as it is desired that the most of the plantation will keep the meeting constantly and all that are there, though not of the twelve shall have a free voice as any of the twelve, and that the greater vote both of the twelve and the other shall be of force and efficacy as aforesaid.

"And it is likewise ordered that all things concluded as aforesaid shall stand in force and be stayed until the next monthly meeting and afterwards, if it be not contradicted and otherwise ordered at said monthly meeting by the greatest vote of those that are present as aforesaid."

The names of seven out of the twelve men were recorded. In the years following, the numbers of selectmen annually chosen in Dorchester varied but diminished, until 1663 when five only were elected.

In Watertown, Massachusetts, in 1634-5, the records show that it was "agreed by the consent of the freemen that these eleven freemen shall order all the civill affairs of the Towne for this year

¹H. G. Arnold, "History of Rhode Island," I, 143 *et seq.*

following and divide the lands." Then are named the chosen eleven. The like number were appointed the following year and until 1643, when nine only were named.

By the "Bodey of Libertyes," enacted by the General Court in December, 1641, "the freemen of every towne or township" were given "full power to choose yearly or for a lesse time out of themselves a convenient number of fitt men to order the planting or prudential occasions of that town according to instructions given to them in writing; Provided nothing be done by them contrary to the publique laws and orders of the countrie, provided also the number of such select persons be not above nine."

The name first occurs in the records of the town of Boston in November, 1643; and on November 29, 1645, John Winthrop and nine others are declared to be chosen selectmen. Their duties as recorded in one of the votes of the inhabitants were:

"To oversee and take order for all the allotments within us, and for all comers into us, and also for all other the occasions and businesse of this town."

Formal instructions to them were voted at the annual town meetings. Those for 1657, quoted by Josiah Quincy in his "Municipal History of Boston," are typical of the requirements of such officers generally during the colonial period and may be summarized as follows:

"The selectmen are instructed to cause to be executed all the orders of the town according to the power given them by law as found in the printed laws under the titles of Townships, Ecclesiastics, Freemen, Highways, Small Causes, Indians, Cornfields, Children, Masters, Servants, Pipe Staves, Stores, Weights and Measures, and any other orders in Force; and where they found any defect, to issue thereon good orders to be approved by the town and the General Court. The subjects most necessary to be understood were:

"About entertaining new inhabitants. That none transplant themselves from the country to inhabit the town without giving notice; to see whether such persons are to live under other men's roofs as inmates, and if so to deal with them according to law. If they are poor and impotent, to deal with them under the title of Poor. If they buy houses and land, to have a vigilant eye to see that they live not idly, but have some lawful employment or calling. If by reason of sickness they cannot subsist their children, to take the children from them and put them to apprenticeship. If any be debauched and live idly, to provide a house of correction for them at the charge of the town and county.

"To have the disposal of the waste lands of the town for the town's benefit. To make effectual order to prevent harm from swine. As

to particular highways to each man's lot, if the General Court's order does not reach it, to remind our deputies to procure some addition. To take care not to let any buildings encroach on the streets or the town's lands. To appoint meet persons to keep clear of stones and other encumbrances the streets and the flats near the wharves. To see that some life is put into the laws about casks, and that they be of due gauge to prevent fraud, and that the deceitful packing of beef and pork be duly punished; that sworn men be appointed for measuring grain, cording wood and boards. To have a jury chosen on weights and measures, to observe defects in chimneys and in houses in danger of falling, and present the same to the county courts; to have orders passed against regrators and forestallers and our deputies get them confirmed by the General Court.

"To hold monthly meetings seriously to consider these things for the good of the town, the glory of God, and establishing truth and love among us.

"To call a meeting of the town every half year for the submission of their orders and accounts for the town's approval, and particularly of what had been spent for buckets, hooks and ladders, and for powder, and whether ladders have been provided for each house according to law; also as to what has been spent as to the great guns and ammunition of the town, that provision may be made for them."

These orders, with occasional variation, were apparently renewed every year in town meeting until 1694.¹

In conjunction with a commissioner, chosen by the freemen for that purpose, the selectmen listed annually all persons and property in the town subject to taxation and assessed the rates upon them.

They took charge of the persons and estates of insane persons during their disability. They not only acted as truant officers to keep the children in school, but had general oversight of the schools which they were required to visit half yearly, to inquire into the regulation and discipline.

They were early given charge of the running of town lines, of the fencing of individual lots and of the tilling and pasturage of the common lands.

It was their duty also to enforce the regulations as to wearing apparel prescribed by the General Court in the colony of Massachusetts Bay. In that colony they were also required to have a vigilant eye over their brethren and neighbors, to see that the children and apprentices were taught to read the English tongue and a knowledge of the Capitol laws, on penalty of twenty shillings for each neglect therein; also to see that masters of families should

¹Josiah Quincy, "Municipal History of Boston," 7.

once a week at the least catechize their children and servants in the grounds and principles of religion, or cause them to learn some short orthodox catechism without book, so as to be able to answer questions propounded to them by the parents, masters, or any of the selectmen. They had power also to take unruly children and apprentices from their parents or masters and place them with other masters, who would bring them up properly until they became of age.

It devolved upon them to cause tything-men to be appointed or elected annually, whose duty it was to inspect licensed houses and inform a justice of the peace or the court of general sessions of the peace, of disorders and misdemeanors discovered by them, and of all idle and disorderly persons, profane swearers, cursers, sabbath-breakers, and like offenders. The tything-men carried a black staff tipped with brass, as a badge of office, provided by the selectmen at the cost of the town.

Similar causes and conditions in other colonies brought about like results. Mr. C. H. Levermore in his interesting monograph upon New Haven thus describes the experience of that colony:

"The oft-recurring assemblages of the Town-Court with its relentless fines became burdensome and costly. The Town-Court of November 17, 1651, met the demands of the hour, and, doubtless with due consideration of the usages in Connecticut and Massachusetts, decreed the change. "It was propounded that there might be some men chosen to consider and carry on the towne affaires, that these meetings which spend the towne much time, may not bee so often." The Court approved the motion, and chose "one out of each quarter to this worke — viz. Francis Newman, John Cooper, Jarvis Boykin, Mr. Atwater, Wm. Fowler, Richard Miles, Henry Lindon, Thos. Kimberly and Mathew Camfield, which are to stand in this Trust until the Towne Elections in May come twelve month; and they are by this Court authorized to be Townesmen, to order all matters about Fences, Swine, and all other things in the generall occasions of the Towne except extraordinary charges, matters of Election in May yearly and the disposing of the Towne's land."¹

The method of calling town meetings, except when modified by a vote or by-law of the town, in the several states, except Rhode Island, is substantially as follows:

The initial step is the drawing up of a notice to the inhabitants in the form of a written or printed warrant, fixing the time and place of the meeting, and setting forth the business to be done. The latter requirement must be strictly met, as no other subjects can be considered than those specified in the warrant. The warrant must be signed by the selectmen or a majority of them. In default of

¹C. H. Levermore, "Republic of New Haven," 71, 72.

action by the selectmen, recourse may be had to a justice of the peace, who upon application of a certain number of voters is authorized to call the desired meeting. Electors' meetings in Connecticut are warned by the town clerk.

The warrant is generally directed to a constable, but may be addressed to the inhabitants, and is served by posting copies duly attested upon the public sign posts, as is done in Connecticut, or in other public places in the town, or by publication in a newspaper published in the town. The length of notice varies in the different states from five days in Connecticut to fourteen days in New Hampshire.

In Rhode Island, this duty devolves upon the town clerk, who issues his warrant directed to the town sergeant, who posts attested copies in three or more public places in the town at least seven days before the day of the meeting.

Notice of two distinct meetings may be embraced in one warrant. The time of holding the annual meeting is fixed by law; but special meetings may be called at any time upon request of a certain number of qualified voters. No order of business is prescribed by the statutes for the annual meeting, except that in some of the states the law requires that a moderator shall first be chosen, and in Rhode Island the town clerk, town council and justices of the peace are elected in that order, after the moderator is chosen. The laws of Rhode Island also provide for the election in certain towns of an assistant moderator. In Connecticut the registrars of voters appoint moderators for electors' meetings.

The practice has grown up in the more populous towns in Massachusetts of dividing the business of the annual meeting into two parts and holding sessions on two different days, one week apart, the first session for the election of officers and the second for the consideration of the residue of the town's business. In such cases a different moderator is usually chosen for each session.

In Vermont the moderator is elected by a *viva voce* vote, unless a ballot is called for by a certain number of qualified voters. He may be chosen by open or secret ballot in Rhode Island. In the other states he is elected by ballot, and in Massachusetts, in his election, as in that of other town officers whose election is by law required to be by ballot, the law requires the use of the check list.

The term of service of the moderator varies in the different states. In Maine, Massachusetts and Connecticut his duties end with the town meeting over which he presides. In Rhode Island his term of office begins at the next town meeting after that at which he is chosen, and continues until his successor is elected and qualified. In New Hampshire, he is chosen at the biennial town meeting to serve until the next biennial meeting.

The powers of the moderator compared with those of the presiding officer of any ordinary business meeting of to-day seem extraordinary, indeed almost despotic, although perhaps none too great for the ruler of the "fierce democratie."

Without his leave no person may address the meeting, and at his command all shall be silent. If any one persists in disobeying his order and refuses on his request to withdraw, the moderator may have him removed from the place of meeting by force and kept in confinement until the meeting is adjourned. This power is at the present day rarely exercised, but in former times it appears to have been enforced with some harshness judging by the terms of the Massachusetts statute of 1786 (c. 75, s. 6), which provided that any person who persisted in disorderly behaviour and refused to withdraw when directed by the moderator should forfeit and pay a fine of twenty shillings and might by direction of the moderator be carried out of the meeting by some constable and put into the stocks, cage, or some other place of confinement, and there be detained for the space of three hours, unless the town meeting should sooner adjourn or dissolve. The fines imposed for such breaches of order range from one to twenty dollars.

The moderator commonly presides at town elections, has general charge or supervision of the ballots, and declares the result of the voting. In Massachusetts, however, the duty of canvassing the votes and declaring the result devolves upon other officers. The moderator may administer in open meeting the official oath to any town officer chosen at the meeting.

He decides all questions of order, and, in the absence of a town by-law bearing on the matter, is bound by no rules of procedure in conducting the business of the meeting, barring a few regulations contained in the statutes of the states. Among these, for example, Maine, Massachusetts, New Hampshire, and Vermont provide by law that his declarations of votes may be immediately questioned by a certain number of voters, and in such cases he is required to verify his ruling by polling the voters or dividing the meeting. In Rhode Island, he is obliged to hear all electors who desire to speak before putting a question to vote. In case of a tie, in Connecticut, the law allows him to cast the deciding vote. There is one peculiarity of town government in Rhode Island, growing out of the property qualification for voters still retained in that state. The state constitution provides that no one shall vote upon any proposition to impose a tax, or for the expenditure of money in any town or city, unless, within the year next preceding, he shall have paid a tax assessed upon his property therein of the value of at least one hundred and thirty-four dollars.

This results in two kinds of elections and town meetings. At the "financial town meeting," no one can vote unless he is on the voting-list as qualified under the above-mentioned provisions of the law. Accordingly, it frequently happens that only a comparatively small proportion of the electorate participates in the transactions of the town meeting, and in all proceedings relating to the raising and expenditure of money the property-holders only have a voice.

This condition, however, does not always result in the expediting of the public business; for, in order to carry into effect the rule which requires the moderator to refrain from putting a question under consideration until all those who are desirous of being heard have spoken, it happens sometimes that by successive adjournments the meeting lasts for days or weeks before all are talked out and ready to vote.

The voting franchise has been so broadened in the states of New England during the lapse of centuries, that to those who have little acquaintance with their early history it might seem that universal suffrage had always been the rule. A backward glance at the history of the early communities out of which have grown these populous commonwealths will dissipate that delusion.

The first settlers in the colony of Massachusetts Bay brought with them the class distinctions among which they had been born and bred. They had no thought of establishing in the new world a democracy with equality of rights to all the citizens.

Neither they nor their descendants for several generations learned the full meaning of the words, liberty and toleration. Their purpose as revealed in word and act would seem to have been rather to found a theocratic state, in which there was to be allowed neither freedom of conscience nor of political action; and the clergy and their narrow-minded followers in the churches, who claimed to find the bases of their political theories between the lids of the Bible, were to be the controlling power. The general attitude of the dominant party in religious matters may be seen in an utterance of Nathaniel Ward, a deprived clergyman of Essex, England, who came to Massachusetts in the fourth year of its existence, and became the compiler of the "Body of Liberties," adopted in 1641.

In "The Simple Cowler of Agawam," he says: "It is said that men ought to have liberty of their conscience, that it is persecution to debar them from it; I can rather stand amazed than reply to this; it is an astonishment to think that the brains of men should be parboyled in such impious ignorance. He that is willing to tolerate any religion, or discrepant way of religion, besides his own, unless it be in matters merely indifferent, either doubts of his own or is not sincere in it."

In political things, the spirit of the times is shown in the words

of Rev. John Cotton. "Democracy," said Cotton, "I do not conceive that ever God did ordain as a fit government either for church or commonwealth." This view was also held by Governor John Winthrop.

The charter of the colony gave the governor, eighteen assistants, and the freemen, assembled in a single chamber as the "great and General Court," the power of electing officers and making laws and ordinances. It prescribed no condition of investment with the franchise, except the will and vote of those who were already freemen; but at the first cisatlantic General Court for election in 1631, an order was passed limiting the franchise to church members. The result of this action was that as late as 1676, five-sixths of the people were still disfranchised.

The spirit of the first settlers in Plymouth seems to have been different. "Since the first settlement in 1620," says William T. Davis, in "Ancient Landmarks of Plymouth," "the grand idea of popular government had been ever uppermost in the minds of the Pilgrims. In this respect there was a wide difference between them and their neighbors of the Massachusetts Colony. From the first, the Governor and assistants of Plymouth were chosen by the people and the people were the law-making power."¹

The Constitution of New Haven adopted in 1639 provided that church members only were to be "free burgesses," and were to choose from their own number magistrates and officers, to make laws, divide inheritances, decide cases at law, and transact all public business.

In Connecticut and Rhode Island a different political climate seemed to exist.²

The presence there of Thomas Hooker and Roger Williams may have created it.

The broad foundations of our American system of popular government were outlined in the utterances of Thomas Hooker, who more perhaps than any other may be regarded as the founder of Connecticut.

In a remarkable sermon preached at Hartford on May 31, 1638, of which the short-hand notes have been deciphered by J. H. Trumbull, occur the following declarations:

"The choice of public magistrates belongs unto the people, by God's own allowance.

"The privilege of election, which belongs to the people, therefore, must not be exercised according to their humours, but according to the blessed will and law of God.

¹Davis, "Ancient Landmarks of Plymouth," 78.

²Alexander Johnston, "Connecticut," 66; J. G. Palfrey, "History of New England," 1, 121.

"They who have power to appoint officers and magistrates, it is in their power, also, to set the bounds and limitations of the power and place unto which they call them."

Among the "Reasons," he said, "Because the foundation of authority is laid, firstly, in the free consent of the people." Among the "Uses" the lesson taught is, "Of exhortation — to persuade us as God has given us liberty to take it."

Here we find the basic principles of the American commonwealth announced on American soil more than a century before the Declaration of Independence.

The three original settlements in Connecticut, which were formed chiefly by secessions from Watertown, Newtowne, (Cambridge), and Dorchester in Massachusetts, established towns and churches together. "Town government and church government were but two sides of the same medal, and the same persons took part in both. For nearly a century (until 1727) the same persons in each town discussed and decided ecclesiastical and civil affairs indifferently, acting as a town or a church meeting."¹ No religious test was ever applied in the admission of freemen in the Connecticut colony.

The Constitution of 1839 gave the General Court power to "admit of freemen." The right of suffrage was later given to admitted freemen who had taken the oath of fidelity to the Commonwealth, and in 1643 the Court declared that it understood by "admitted inhabitants," those who had been admitted by a town.

The towns retained complete political control of their own affairs.

Although later a property qualification for voters was instituted, the towns which founded the state of Rhode Island and Providence Plantations (as it is officially known) were in the beginning all pure democracies.

This character is revealed in the first written compact still extant, signed in 1637 by thirteen of the founders of Providence, among them Roger Williams, who promised to subject themselves "in active or passive obedience to all such orders or agreements as shall be made for public good of the body in an orderly way by the major assent of the present inhabitants, masters of families, incorporated together into fellowship, and such others whom they shall admit unto them, only in civill things."² Here was a distinct recognition of majority rule, and a reservation of religious independence.

The same spirit and purpose appear in the vote adopted in 1647 by the first general assembly at Portsmouth.

"For the Province of Providence

It is agreed by this present Assembly thus incorporate and by this present act declared, that the forme of Government established in

¹ Johnston, "Connecticut," 60, 61, 75.

² R. I. Col. Recs. 14.

Providence Plantations is Democraticall, that is to say, a Government held by ye free and voluntarie consent of all, or the greater part of the free Inhabitants."

The Patent of 1644 obtained by Roger Williams follows the language of the General Assembly in part, and adds significantly, but with saving qualifications, a reference to the mother land. It provides that the inhabitants shall have full power and authority to rule themselves "by such a form of Civil Government as by voluntarie consent of all, or the greater part of them, they shall find most suitable to their estate and condition," such government to be "conformable to the Laws of England, so far as the Nature and Constitution of the place will admit."

Under the Patent of 1647 the General Assembly adopted a code, which gave the initiative in the enactment of laws to the towns.¹

Only after the four towns had discussed, each by itself, a proposed law and passed favorably upon it, was it acted upon by the Assembly.²

"When in 1651 William Coddington obtained from the home government the act which placed in his hands the long-desired supremacy, the stability of this colonial union received its first test. It yielded. The colony fell apart. Again, as at the beginning, Portsmouth and Newport acted together. Providence and Warwick, left thus to themselves, formed a separate government."

The charter of 1663, which superseded the Patent, formed a stronger central government; but upon the advent of Sir Edmund Andros in 1686, whose measures of radical reconstruction were repugnant to the Rhode Island colonists, the General Assembly voted that it should be "lawful for the freemen of each town in this Colony to meet together" and make all necessary provision "for the managing the affairs of their respective towns," and then dissolved. "In 1690, the government under the charter was as peacefully resumed as it had been set aside, the interference of the royal agent being at an end."³

The qualifications of voters are nearly uniform throughout the New England States. In Massachusetts, every male citizen of twenty-one years of age or upwards, not being a pauper or under guardianship, who is able to read the constitution of the commonwealth in the English language and to write his name, and who has resided within the commonwealth one year and within the city or town in which he claims the right to vote six calendar months preceding a state, city, or town election, may have his name entered upon the list of voters of such city or town, and shall have the right to vote therein at any such

¹ R. I. Col. Recs. 143-145; 2 R. I. Col. Recs. 3-18.

² Durfee, "Gleanings from the Judicial History of R. I." Hist. Tracts No. 18.

³ Wm. E. Foster, "Town Government in R. I." Johns Hopkins Univ. Studies, Series II, 21, 23.

election or at any meeting held for the transaction of town affairs, upon complying with the statutory requirements as to registration.

The minimum age limit is the same in all the states, but the period of previous residence in the state varies. Massachusetts, Vermont, and Connecticut each require one year's residence; Rhode Island, two years; New Hampshire, six months; and Maine, three months.

Citizenship of the United States is in every state a prerequisite.

In Maine, Indians not taxed, and in Rhode Island members of the Narragansett tribe, are not permitted to vote. Paupers are universally excluded from the franchise.

In New Hampshire, a person is disqualified from voting who has received assistance from the town or county for himself or his family within ninety days prior to the meeting in which he claims the right to vote, also any one who has been excused from paying taxes in any town at his own request. But these disabilities may be removed by a tender by the voter, or proof of such tender, to the moderator, collector of taxes, or selectman, of payment of all taxes assessed against him in the one case, or of all necessary expenses incurred by the town, or county for such assistance, in the other.

Ability to write and to read the state constitution in English is required in all the states except Rhode Island and Vermont. This requirement does not apply to persons physically unable to comply with it in Maine, New Hampshire, or Massachusetts, nor in the last named state to any one who had the right to vote on May 1, 1857, nor in Maine to any one who was sixty years of age or upwards, or who had the right to vote on January 4, 1893, nor in New Hampshire to any person who was sixty years of age or upwards, on January 1, 1904.

In Vermont no person is admitted to take the freeman's oath, or vote at an election, until he has obtained the approbation of the board of civil authority of the town where he resides. A delinquent tax-payer is not allowed to vote at an annual meeting until he has paid his taxes.

The state constitution of Connecticut provides that the privileges of an elector shall be forfeited by a conviction of bribery, forgery, perjury, duelling, fraudulent bankruptcy, theft, or other offense for which an infamous punishment is inflicted. The rights so forfeited may be restored by a two-thirds vote of the General Assembly.

There is also in Connecticut a requirement that a proposed elector shall sustain a good moral character; and no person shall be deemed to have complied with this requirement who has during his minority been convicted three or more times of any offense punishable with imprisonment, or with fine and imprisonment; who has been convicted of any offense mentioned in the section of the Constitution above quoted; or who at the time of reaching his majority was serving a term in jail or prison for any such offense.

In Rhode Island only is there any property qualification for the suffrage. Under the laws of that state there are two classes of voters, the first as registered, the second as unregistered, who have a right to vote in the election of all civil officers and on all questions in all legally organized town, ward, or district meetings.

Of the registered class, no person is allowed to vote in the election of the city council of any city, or upon any proposition to impose a tax, or for the expenditure of money in any town or city, unless he shall within the year next preceding have paid a tax assessed upon his property therein, valued at least at one hundred and thirty-four dollars.

Other persons, not registered, but otherwise qualified to vote, may exercise the privilege, who are really and truly possessed in their own right of real estate in the town or city where they claim the right to vote, of the value of one hundred and thirty-four dollars above encumbrances, or which rents for seven dollars per annum clear of interest on encumbrances, being an estate in fee simple, fee tail, for life, or in reversion or remainder, which qualifies no other person to vote, the conveyance of which estate, if by deed, shall have been recorded at least ninety days; or who have such an estate, within the state, but out of the town or city in which they reside as above described, and who in that case shall produce a certificate from the clerk of the town or city in which the estate lies, bearing date within ten days of the time of his voting, setting forth that such person has a sufficient estate therein to qualify him as a voter and that the deed, if any, has been recorded ninety days.

The suffrage is limited to male citizens in all the states of New England except Connecticut, Massachusetts, and Vermont, where women are allowed to vote upon educational matters and for school officers and committees.

Registration is an indispensable preliminary, in all the states, to the exercise of the right to vote. Methods of registration differ in the different states.

In Massachusetts, boards of registrars, in small towns composed of the selectmen and town clerk, in others, appointed by the selectmen, perform this duty. The times and hours of their sessions are fixed by the general law and the town by-laws. Notices of the meetings of the board are posted beforehand in public places, or published in a local newspaper.

Applicants are examined under oath as to their qualifications as voters, and, if naturalized citizens, are required to produce their papers of naturalization. A book of registry is kept showing the names of all persons registered, their residences, ages, places of birth, and dates of becoming inhabitants of the town, and of the state, and if naturalized citizens, the particulars of their naturalization. In

order to guard against fraud in meeting the educational requirements, the registrars are provided by the Secretary of the Commonwealth with a copy of the Constitution printed on uniform pasteboard slips each containing five lines of that instrument; and each applicant is required to draw one such slip from a box so constructed as to conceal the slips from view, and to read the slip so drawn by him.

Complete voting-lists are prepared from the register and copies thereof posted by the registrars in their office and in one or more other public places in the town and in each voting precinct, at least twenty days before the annual town election and thirty days before the annual state election. Additions to and corrections of the lists are made by the registrars before the day of election, and certificates are granted by them to voters in cases of error or omission for use at the polls.

In the makeup of the board of registrars, the two leading political parties are equally represented; their sessions are required to be open to the public; and their books are subject to public inspection. They are required to furnish lists of voters for all meetings for elections, and for caucuses when requested by the chairman of the town committee of the party whose caucus is to be held.

In Vermont, it is the duty of the selectmen in each town, at least thirty days before a freemen's meeting for the election of state and county officers, to make an alphabetical list of the persons qualified to vote in such meeting, and to cause copies of the list to be posted in two or more public places in the town, and a copy to be filed in the town clerk's office.

This list is revised by the board of civil authority of the town, which consists of the selectmen, town clerk, and the justices of the peace residing in the town, at least fifteen days before the freemen's meeting, at a hearing appointed and notified by them for the purpose; but no such hearing can be held within thirty-six hours of the time appointed for the meeting at which the check-list is to be used.

No name appearing on the list can be erased by the board without giving two days notice to the person bearing it that the right to have his name appear on the check-list has been challenged, and that he may have a hearing at a time and place specified in the notice. Similar methods are pursued in preparing check-lists for local town and village elections.

No person is permitted to vote at a freemen's meeting for any of the officers to be elected at such meeting or at a town or village meeting at which a check-list is required to be used, unless his name appears on the check-list; and no person's vote can be rejected whose name is on the list, if he is a resident of the town or village on the day when the meeting is held.

In New Hampshire, the voting list is prepared by the board of

supervisors, which consists of three legal voters, chosen by the town at each biennial election. No person can be supervisor and selectman at the same time. The supervisors hold office for two years and may fill vacancies in their own number. In case of failure to fill such vacancies seasonably for the performance of their duties, or when the whole board is vacant, the selectmen make the appointments.

It is their duty to make and post at two or more public places in the town, a complete alphabetical list of the legal voters fourteen days before the day of any election at which such list is to be used; and they are required to hold a session at some suitable place in the town, two days at least before the day of election, one of which shall be the day next preceding that of the election, for the correction of the check-list. Notice of such session must be given on the posted check-lists. They hear all applications for correction and the evidence submitted thereon and correct the check-list to their best knowledge.

On the day of the election, before opening the meeting, the supervisors subscribe and make oath to a certificate on the back of the check-list, as corrected by them, to the effect that the list contains the names of those persons only who are by actual residence legal voters in the town. A copy of the list is filed with the town clerk. All persons whose names are entered upon the corrected check-list are deemed voters; and no person whose name is not upon the list is allowed to vote, unless his name was left off by mistake and his right to vote was known to the supervisors before the check-list was originally posted.

The supervisors are required to be present at the opening of each town meeting at which the check-list is to be used, to have with them the corrected check-list and to remain in attendance upon the meeting until its close.

In Maine, in towns where the selectmen are not assessors, the assessors are required in each year of a state election to prepare a list of persons whom they judge to be constitutionally qualified to vote at such election, and to deliver it to the selectmen.

It is the duty of the selectmen to correct the list, holding open sessions for the purpose of receiving evidence of the qualifications of persons claiming the right to vote and for the correction of the list, giving previous notice of their sessions in like manner as their town meetings are notified. An alphabetical list of voters thus prepared and revised is deposited in the town clerk's office, and a similar list is posted in one or more public places in the town.

The selectmen also make a correct list of the inhabitants in their towns qualified to vote for town officers, deposit it in the office of the town clerk, and post a copy in one or more public places in the town, annually, on or before the twentieth day of February. They are also required to be in session at some convenient time and place, to be by

them specified in the warning for the town meeting, on the secular day next preceding the annual election in March, or on the morning of the day of election, to hear and decide upon the applications of persons claiming to have their names entered upon the list; and such session, when held on a secular day preceding the election, continues at least three hours, and when held on the day of election, continues until the election of town officers required by law to be elected by ballot has been completed.

The town clerk is required to have the check-list at every town meeting for the election of town officers chosen by ballot, and the list must be used at such meeting, if demanded by one-third of the voters present.

In Connecticut, two registrars of voters are chosen annually by every town (with the exceptions named in the statute), each belonging to a different political party, and neither can serve at the same time as town clerk or selectman. It is the duty of each registrar to appoint a deputy, who assists his principal when required, discharges his duties when his principal is absent or unable to act, and, if a vacancy occurs in the office from any cause, himself becomes registrar and appoints a deputy.

The registrars are required, biennially, to complete a correct list of all electors in their town, or its voting districts, entitled to vote, at least twenty days before the electors' meetings, and to place on such list under the title, "to be made," the names of persons by whom or on whose behalf the claim is made to either registrar, that they will be entitled to be made electors, on or before the day of such meeting.

Applications for registration under the title "to be made," in towns having less than five thousand inhabitants, may be made either orally or in writing. In towns having more than five thousand inhabitants, applications must be made in writing by the applicant himself or by some other elector residing in the town on his behalf, giving full particulars as to his place of residence, the date when he became or will become of age, the dates when he became a resident of the state and of the town, and, if he was not born in the United States, the date when he became a resident therein.

Sessions are held by the registrars for the perfection and revision of the list, and, when completed, it is certified and deposited by them in the town clerk's office within the time specified before the electors' meeting. Certified copies of the list are also posted by them at their place of meeting and in such other places as may have been designated in a town meeting. They also give notice, in the list, of the times and places at which they will hold one or more sessions within the next twelve days, for the revision or correction of the list, by publication in a newspaper, or by posting the same on the public signpost, at least five days before the first of such sessions.

At these sessions names may be added to or erased from the list, but the name of no person can be erased without notice to him at least twenty-four hours before the session at which action is taken thereon.

Appeals may be taken from the decisions of the registrars to the selectmen and town clerk, who, upon notice to the registrars, may act upon such appeals. If an appeal is sustained, the persons whose qualifications are in dispute is registered, otherwise not.

The manner of registering voters for town meetings and elections is substantially the same as that above described for electors' meetings.

In all cases before filing the corrected list, the registrars add the names of those persons who have formerly been admitted or registered as electors in their towns, and have resided in the state one year and in the town six months preceding the electors' meeting, as the case may be; also the names of those electors who have been admitted by the board of admission of electors; and, under the title, "to be made," those only on the first list whose qualifications of age or residence, either for admission or naturalization, appear not to have matured at the last session of the board.

A separate list is made by the registrars under the title, "women's list to be made," of the names of those women by whom or in whose behalf the claim is made to either registrar that they will be entitled to vote for school officers and on questions relating to education or to schools; and all applications "to be made" in favor of women are governed by the same rules that apply to men.

Under the constitution of Connecticut, the selectmen and town clerk are the sole judges of the qualifications of electors; hence the formal act of admission of voters is performed by those officers, who hold meetings for the purpose at times and between hours fixed by law. They are, however, limited in their action to the lists, "to be made," prepared by the registrars.

It is their duty to deliver to the town clerk of the town a certified list in writing of all persons admitted as electors, which is *prima facie* evidence that each person named therein possesses the requisite qualifications for an elector; and the names of all persons so admitted are recorded in the records of the town.

In Rhode Island, the duty of registering voters devolves upon the town clerk and town council of the several towns. The town clerk is required to keep a book entitled the REGISTRY BOOK, furnished by the secretary of state, ruled and arranged for the recording of the facts of birth, residence, and citizenship necessary to establish the right of persons to be admitted as voters. In this book, every person, with exceptions noted below, who is or may be qualified to vote, upon being registered, annually, on or before the last day of June, registers his

name, and thereby certifies to the truth of the facts stated in the book. And persons of foreign birth are required to file with the town clerk proof that they are citizens of the United States.

The town clerk is required, annually, to place upon the voting-list the names of the several persons who have previously been upon the voting-list, against whom a property-tax to the amount of one dollar or upwards shall have been assessed; and such persons need not register their names annually as is required of persons not paying a property-tax.

The town councils are boards of canvassers, and are required to hold a meeting on Tuesday next after the first Monday in September in every year and to make and correct alphabetical lists:

First, Of all persons qualified, or who may become qualified, to vote generally, to wit: Of all persons entitled to vote under article second, section first, of the constitution, which grants the privilege to persons registered, who have resided two years within the state and six months within the town in which they offer to vote; and also of all persons who are or may be entitled by registry, to vote in their respective towns; distinguishing the persons registered, who are not entitled to vote under article second, section first, of the constitution;

Second, Separately from such lists, correct alphabetical lists, of all persons entitled, or who may become entitled, to vote upon any proposition to impose a tax or to expend money in their towns, to wit: Of all persons entitled to vote under article second, section first, of the constitution, and of every person entitled, or who may become entitled, to vote by the payment of a tax assessed within the year preceding, upon his property in such town, valued at least at one hundred and thirty-four dollars, or on whose property valued as aforesaid a tax has been assessed and not paid; distinguishing in such list those who are not entitled to vote under the first section of article second of the constitution, and also those so distinguished who have not paid the taxes assessed as above stated.

The board of canvassers hold meetings from time to time for the correction of the voting lists, adding names of such persons as they find qualified to vote, their last meeting to be not more than seven nor less than three days prior to the day of an election. When completed, the list is certified by the presiding officer of the board and delivered to the town clerk, who in turn delivers it to the moderator of the town meeting.

The town clerk acts as clerk of the board of canvassers, and it is his duty to produce to the board such returns, documents, and records as may be required by them for the performance of their duties.

The methods of voting in the different states are modeled upon the Australian ballot system. The variations are comparatively slight.

The fundamental note of that system is privacy for the voter in the

preparation and deposit of his ballot. This is secured by the use of voting-booths or marking-shelves at the polling-places, which are arranged in such a way that the individual voter is screened from the view of the officers of election as well as of the public, and no interference with his freedom of action is possible.

The ballots used are also so prepared that the voter can easily mark the candidates for whom he wishes to vote, and after the ballot is cast there is no means of ascertaining how he has voted. These safeguards enable the voter to act without fear of intimidation or discovery, and conduce greatly to that purity in elections which under a popular system of government is so great a desideratum.

The caucus and primary meeting which have come to be a distinctive feature of American politics and political life are regulated by law in the New England states. A brief account will be given of these laws and regulations so far as they relate to towns and town officers.

Massachusetts has an elaborate code for the government of party nominations. In that state, the term "caucus" applies to any public meeting of the voters of any ward of a city or of a town, or of a representative district, held under the provisions of the law, for the nomination of a candidate for election, for the election of a political committee, or of delegates to a political convention.

No body of voters is recognized by law in Massachusetts as a political party which did not poll at least three per cent. of the entire vote cast at the preceding election for governor. The term "municipal party" applies to a party other than a political party, which, at the preceding city or town election, polled for mayor or a selectman at least three per cent. of the entire vote cast in the city or town for that office, and is used only with reference to caucuses for the nomination of city or town officers.

Recent acts of the Legislature (C. 454, Acts of 1903) amended by C. 386, Acts of 1905, have modified the general law and introduced new methods of conducting primaries. These methods are intended to prevent certain frauds practised under the old system. The new act requires a person who seeks to vote at a primary to declare as he offers to vote which party ballot he desires, and, as he receives the ballot, his selection is checked on the voting-list used by the ballot-clerk, and the list is returned to the town clerk of the town for preservation during the succeeding year. A copy of the party entries on the list is used at subsequent primaries for determining with what party the voter has been enrolled. The voter may change his enrollment by appearing in person before the town clerk and requesting in writing to have his enrollment changed to another party; but such change does not take effect until the expiration of ninety days thereafter.

No person having voted in the caucus of one political party, is entitled to vote or take part in the caucus of another within the ensuing twelve months; but no voter can be prevented from voting or taking part in any caucus, if he takes an oath before the presiding officer that he is a registered voter in the town and has the legal right to vote in the caucus; that he is a member of the political party holding the same; and intends to vote for its candidates at the election next ensuing; and that he has not taken part or voted in the caucus of any political party for twelve months last past.

The ballot, ballot-boxes, voting-list, seals, and record-books and other apparatus for each political and municipal party are provided and treated in accordance with the provisions of the general election law, except that the number of ballots is determined by the town clerk, and the ballots for each party are printed on paper of a different color from that on which those for any other party are printed.

Any town may adopt the provisions of the act by a vote at any annual meeting upon a petition of five per cent of the voters registered at the time of the preceding annual meeting, filed on or before the last day for filing nomination papers.

Lack of space forbids the giving of any extended account of the provisions of the general law of Massachusetts, which prescribes in great detail the manner of calling and conducting caucuses and primaries, as well as the organization and proceedings of town political committees.

In Maine, no person is permitted to take part or vote in any caucus of a political party unless qualified therefor by enrollment in the manner provided by law.

Any legal voter may enroll himself as a member of any political party by filing with the town clerk of the town of which he is a legal voter, a declaration in writing, signed by him, substantially as follows: "I being a legal voter of, hereby elect to be enrolled as a member of the party. The following statement of name, residence, place of last enrollment, if any, and party of last enrollment, if any, is true." A new enrollment may be made at any time, but the person making such new enrollment cannot vote in any political caucus within six months thereafter, if he designates a different political party from that named in his preceding enrollment.

The town clerk files the declaration, indorsing thereon the date of filing, and records the name, residence, place of last enrollment, and date of filing in a separate book kept for the enrollment of members of each political party.

Any voter not previously enrolled may enroll himself during a caucus by subscribing and making oath to the following statement

before the chairman of the caucus: "I do solemnly swear that I am a qualified voter in this town, or ward, and have the legal right to vote in the caucus of the party. I am a member of that political party, and intend to vote for its candidates at the election next ensuing. I have not taken part or voted at the caucus of any other political party in the six months last past." The secretary of the caucus indorses upon the statement whether the person subscribing and swearing to the same voted at the caucus, and returns the statement thus indorsed to the town clerk, who thereupon enrolls the voter in the enrollment list of the party designated by him.

Notices of caucuses signed by the chairman and secretary are issued by each town committee not less than seven days prior to the day on which the caucuses are to be held, and are conspicuously posted in at least five places on the highways of each voting precinct, and state the place, hour, and day of holding the caucuses, and the hours fixed by the committee for opening and closing the polls. Voting-lists used at the election next preceding are used as check-lists at the caucus, if the town committee so determine, and provide in the call, and are furnished on request by the officials having charge of such lists.

The law, however, does not apply to towns of less than two thousand inhabitants, to cities of more than thirty-five thousand inhabitants, to cities wherein the calling and holding of caucuses is regulated by special law, nor to citizens' caucuses.

In New Hampshire, any political party, which, at the biennial election next preceding, polled at least three per centum of the entire vote of the state given in for governor, may in towns which have adopted the provisions of the act of 1897 concerning elections, hold a caucus for the nomination of candidates for such town officers as are chosen at biennial elections.

Certificates of nominations made in such caucuses are signed by the chairman and clerk of the caucus; and, when practicable, by the candidate also, and contain the name and residence of each candidate, the office for which he is nominated, and the political principles, or the name of the party which he represents.

In Vermont, nominations to public office may be made by a convention of organized delegates or voters representing a political party which polled at least one per cent. of the entire vote cast in the state at the last preceding election, or, if the office is to be filled by the voters of a town, nominations may be so made by a political party which polled at least one per cent of the entire vote cast in such town at the last preceding election. A convention authorized to nominate candidates to a public office may by resolution authorize a committee appointed by it to make nominations to such office.

A new method of enrollment of members of political parties is

prescribed in No. 2, Acts of 1904. Under the provisions of this act, the secretary of state is required, on or before the first day of March in each year in which a biennial election is held, to furnish, at the expense of the state, to town and city clerks blank certificates for persons qualified to vote in freemen's meetings. The certificate is so drawn as, when signed by the applicant, to declare his intention to vote with the party specified at the coming election. These blanks may be attached to each inventory furnished to male residents of the town required to return an inventory of his estate for taxation.

A person who desires to vote at a party caucus for the election of delegates to a party convention is required to sign and deliver to the lister, with his inventory, the foregoing certificate of his intention to act and vote with the political party in whose caucuses he wishes to take part. A person who fails to return such a certificate is not eligible to vote in any caucus to elect delegates to conventions to nominate state and county officers and representatives in Congress or to nominate town representatives.

The selectmen of the town are required, upon a petition of voters for that purpose, to make a list of all persons qualified to vote, as provided by this act, in each year in which a biennial election is to be held. This list is revised and posted in the town by the board of civil authority, and is used at caucuses of the political parties held in the town. No person is allowed to vote in caucuses unless his name appears upon the check-lists so prepared.

In Rhode Island, no political party is recognized under the law, unless it has at the next preceding annual election polled for governor at least two per cent of the entire vote cast in the state for that office. Any convention of delegates representing a political party held in any town, and any caucus held in the town, may make one nomination for each town office therein to be filled at the election, by causing a certificate of the nomination to be filed at least ten days before the day of election in the office of the town clerk.

The certificate of nomination states the facts above mentioned, and specifies the office for which the candidate is nominated, the party or political principle he represents, expressed in not more than three words, provided that in such expression the words, "Republican," or "Democrat," be not combined with any other word or words, and should give his place of residence with street and number thereon, if any. The certificate is signed by the presiding officer and the secretary or clerk of the convention or caucus, who add thereto their places of residence, and make oath to the truth of the statements contained in the certificate.

Special acts in relation to the cities of Providence, Newport, and Pawtucket, provide in great detail for the holding and conduct of political caucuses in those places, but the general law applicable to

towns gives few particulars in relation to the proceedings in such caucuses.

By the provisions of C. 273, of the Acts of 1905, which repealed all previous statutes relating to political primaries and caucuses in Connecticut, registrars of voters are required to make enrollments of voters for use at primaries and caucuses in substantially the same manner as lists of voters are made for use at elections. Copies of such lists are delivered by the registrars to the chairman of the town committee of each political party. The provisions of the act do not extend to any political party or political organization casting less than ten per centum of the total vote of the town or city at the last previous general election.

The voting at any caucus or primary may be done by ballot upon the written request of any lawful member of the party, if twenty-five per cent of the electors present and lawfully voting vote in favor of such motion. Tellers are then appointed and the ballots are cast and the voters' names checked upon the enrollment list in the manner in which voting is usually conducted at general elections.

Town officers, * with the exceptions noted below, are chosen annually at the annual meeting of the towns. An exception to this rule is found in New Hampshire where moderators are chosen at the biennial elections.

Every citizen, with certain exceptions named in the statutes, may be compelled to serve his town in any office to which he may be lawfully elected or appointed. The grounds of exemption from service differ in the several states. In Massachusetts, no person is required to serve two terms successively in the same town office, nor to serve as constable, if he holds a commission as an officer of the United States or of the commonwealth or is a member of the council, or a member of the fire department, or if he has been a constable or a collector of taxes in the town within the preceding seven years. No person is required to act as surveyor of highways oftener than once in three years.

In New Hampshire, no person is obliged to serve in any town office two terms successively, nor is any one compelled to serve as collector of taxes in any case.

The rule that no person is eligible to a town office who is not qualified to vote for town officers appears to be universal, with the exception that candidates for school committee in Rhode Island need not be so qualified.

A conviction for duelling debars the person convicted for life from voting and holding office in Connecticut and Vermont; in Massachusetts and Maine, the disqualification continues for twenty years.

* In the statutes of Massachusetts, the term "Town officer" applies to any person to be chosen at a town meeting. R. L., C. 11, S. 1.

A conviction for bribery likewise disqualifies for life in all the states in which that offense is prohibited, except Rhode Island, where the disability may be removed by legislative act. Any person, however, in the latter state who is sentenced to state prison for one year or to imprisonment for life is forever disqualified from voting or holding office, unless relieved by an act of the legislature.

Women are eligible to various town offices in the different states. In Massachusetts, they may be chosen members of school committees, trustees of town libraries, and overseers of the poor, and may be appointed assistant town clerks. In Connecticut, they may serve as school officers, assistant town clerks, and registrars of vital statistics. In Maine, they may act as deputy town clerks, and upon school committees. In Vermont, they may be elected or appointed to the office of town clerk or superintendent of schools, if twenty-one years of age and residents of the town for one year next preceding the election or appointment.

Heavy penalties are imposed upon towns for failure to elect certain officers. In Massachusetts, for neglect or refusal to choose a school committee, a town forfeits not less than \$500 nor more than \$1,000; for failure to elect selectmen or assessors not less than \$100 nor more than \$500. A town in Connecticut which neglects to choose an assessor or assessors forfeits a sum equal to double its state tax last paid. In Maine, a failure to elect selectmen or assessors entails a forfeiture of from \$100 to \$300.

The holding simultaneously of different offices is forbidden in certain cases. In Vermont, a selectman cannot be first constable, collector of taxes, town treasurer, lister, road commissioner, or auditor. In Connecticut, a registrar of voters cannot be town clerk or selectman. No person in Maine can hold at the same time the offices of road commissioner and selectman.

Certain offices are filled by appointment. The appointing power is in Rhode Island vested in the town councils; in Vermont, it is exercised by the board of civil authority; in Maine, by the municipal officers, and in the other states by the selectmen. These different bodies also have authority to fill, *ad interim*, vacancies in offices filled by the town, their appointees holding the offices until the town chooses their successors.

Town officers are generally elected by ballot with the use of the check-list and ballot-boxes fitted with mechanical devices for the prevention of fraud, in accordance with the Australian system of voting; but in some of the states the method of voting is determined by the voters themselves at the meeting when the election is held or by a vote taken at a previous meeting. The choice is generally determined by a plurality vote, but in Maine and New Hampshire the majority rule prevails.

The official term is usually one year for all town officers except the moderator, whose duties end with the meeting over which he presides; but in New Hampshire and Rhode Island, as to that officer, a different rule obtains. In all the states the practice exists of choosing for longer terms and retiring annually a part of the directors or committee of schools. In Massachusetts and Maine, towns are authorized to adopt a similar rule in the election of their selectmen and assessors. The removal of a person from a town vacates the office held by him.

The compensation of town officers is fixed by the town at its annual meeting in all cases where it is not determined by law, or left to the selectmen or other executive body.

All town officers are required before entering upon the duties of their office to take an oath, affirmation, or engagement, the form of which is generally prescribed by statute, for the faithful performance of their duties, and are subject to a penalty, if they attempt to exercise their offices before being thus sworn or engaged.

Bonds for the faithful discharge of the duties of the office are also required. The officers required to give such bonds vary in the different states. In Vermont, this requirement applies to constables, road commissioners, school directors, collectors of taxes, treasurers, and clerks, and in towns voting therefor, to overseers of the poor. In Maine, constables, collectors of taxes, inspectors of fish, road commissioners, treasurers, and liquor agents only, are required to give bond. In Rhode Island, the rule applies to auctioneers, clerks and collectors of school districts, collectors of taxes, when also town treasurers, constables, keepers of taverns, measurers of lumber, pawn-brokers, private detectives, surveyors of lumber, town clerks, town sergeants, and town treasurers; in Connecticut, to constables, town clerks, collectors of taxes, and treasurers; in Massachusetts, to auctioneers, collectors of taxes, constables, licensed money-lenders, pawn-brokers, private detectives, town clerks, town treasurers, and treasurers of sinking fund commissioners.

In Massachusetts and Maine, towns are authorized to pay the charges of fidelity companies for acting as sureties on the official bonds of any of their officers.

The neglect or refusal of a person not exempt from service to accept an office to which he has been lawfully elected or appointed subjects him to the payment of a fine.

The origin of the office of selectman has been discussed at some length in the previous pages, and it only remains to give some account of the duties and powers pertaining to it. In all the states, except Rhode Island, where the town council sustains practically the same relation to town affairs, the selectmen are the executive and administrative body, and there is scarcely any department of the business of the town which does not feel their influence or their directing hand.

In some of the states, in default of an election of assessors, they discharge the duties of those officers, and in New Hampshire, the assessment of taxes is performed by them in conjunction with or without the aid of, the assessors. They are the judges of the sufficiency and in some cases of the amount of the official bonds required of other officers of the town. In only one state, Connecticut, are they required to give bond, and in that case they act as financial agents of the town. They are the overseers of the poor, and surveyors of highways, in Connecticut. In all the states they appoint minor officers.

Among their most important functions is that of arranging the program of business for, and the calling of, town meetings. In the calling of meetings, except where controlled by special provisions of the law, the selectmen take the initiative. They have the direction of the proceedings in town meetings, the moderator acting only as the presiding officer, and, inasmuch as the articles in the warrant are arranged, if not prepared by them, little business is transacted in the meetings, except such as has been first provided for by them.

Another, and not the least important of their duties, is their general oversight of public expenditures. The town votes annually the appropriations required for the carrying on of the public business in its various branches, such as schools, roads and bridges, etc.; and it is the duty of the selectmen to see that the necessary funds are provided to meet them. They are usually authorized by the town to borrow money in anticipation of taxes, and may execute notes or other obligations of the town for that purpose. They may make contracts for work to be done or materials to be furnished for use upon the public ways or elsewhere, when authorized by a vote of the town. Being public officers, they are responsible, when acting in their public capacity and within the authority conferred by law, only for their own misconduct.

The duty of hearing applications and determining locations for street railways in the public ways devolves upon the selectmen, and they may grant such locations without the intervention of any other authority. They also have control of the construction and of the equipment of street railways so far as the same affect the highway and of the operation of such railways within the limits of their towns. They have like control over the use of the public ways by electric light companies, telephone companies, and other public service corporations. They are empowered to grant licenses for public exhibitions, amusements, and entertainments of various sorts, and may withhold such permits or licenses at their discretion, except when the same are regulated by law.

They have power to appoint constables and police officers, and

may remove them at their pleasure. In some states, they are required to designate and prepare polling-places for use at elections. They also act as registrars of voters in some cases, and take part in the canvass of votes cast at elections and the returns required to be made to the state authorities.

In short, their duties and powers are so numerous and multifarious that even to summarize them would require more space than the limits of this introduction will permit. The reader is, therefore, referred for a further account of these officers to the statutes of the different states given in the latter part of this volume.

The town clerk first appears in the laws of Massachusetts, in 1641, when the towns were empowered by the General Court to nominate a clerk of the writs, whose duty it was to keep records of births, deaths, and marriages. In 1692, towns were authorized to elect a town clerk "who shall be sworn truly to enter and record all town votes, orders, grants and divisions of land made by the town, and orders made by the Selectmen." By the Act of 1785, the clerk was authorized to administer the official oath to town officers elect, and to make a record of the same, and of such other officers as should file certificates of having been sworn before a justice of the peace.

Since the passage of that act, in the progress of legislation, the duties of the clerk, like those of other town officers, have undergone numerous and important changes and additions, until at the present day they are only less onerous and multifarious in their character than those of the selectmen themselves.

Like other town officers, the clerk is elected by ballot at the annual town meeting, and holds office for one year in all the states except Connecticut, which chooses its town clerks biennially, for a term of two years, beginning on the first Monday of January next succeeding their election.

In Vermont, a woman twenty-one years of age may be elected or appointed town clerk. In Connecticut, no person is disqualified from holding the office of assistant town clerk by reason of sex.

In Connecticut and Vermont, an official bond is required of the clerk, and failure to give a bond causes the office to become vacant. In Massachusetts, the clerk gives a bond to cover the fees collected by him for dog licenses.

A vacancy is commonly filled by the town at an annual or special meeting, but may be filled temporarily by appointment of the selectmen. In Connecticut, a town may nominate an assistant clerk, who, having been approved by one of the selectmen and taken the oath required, may in the absence or inability of the clerk, perform all his duties except deciding upon the qualifications of electors. In case of the disability of the clerk, when an assistant has not been appointed, the selectmen may appoint a clerk *pro tempore* to serve

until the disability is removed or a successor has been elected by the town.

In Rhode Island, when at the annual meeting the town fails to elect a clerk, the meeting may be adjourned for the purpose of completing the election, from day to day, not exceeding three days beyond the first day of meeting. The town council appoint a clerk *pro tempore*, when they are satisfied that the clerk is disqualified from any cause to perform the duties of his office, to serve until such disability is removed, or another is elected by the town.

In Vermont, a town clerk, immediately after his election, is required to appoint an assistant, for whose official acts he becomes responsible.

In Maine, a clerk may appoint a male deputy who, in his absence, may perform all his duties; or a woman who, if otherwise qualified, may so far act as deputy clerk as to record chattel mortgages and other papers, and may certify copies of the records in his office.

In New Hampshire, the selectmen may appoint a deputy clerk, who may perform all the duties of the clerk in case of his absence.

In Massachusetts, a clerk may appoint an assistant, who may be a woman, and may in his absence perform all his duties and have the powers and be subject to the requirements and penalties applicable to him. The town may elect, or the selectmen may appoint a clerk *pro tempore*.

Primarily, as their name indicates, town clerks are recording officers and are keepers of the records and archives of their towns. They record all the votes and proceedings of town meetings, and their records are the only competent evidence of the transactions at such meetings. If errors or mistakes are made in such records, the clerk who made them is the only person competent to correct them.

In Connecticut, Vermont, and Rhode Island, the town clerk is the register of deeds for his town, and records instruments affecting the title to real estate. In all the New England states mortgages of personal property are recorded in the office of the town clerk of the town where the owner resides or where the property is situated.

In all the states, town clerks receive and record notices of intention and issue marriage licenses. It is their duty also to collect and record vital statistics and to issue licenses for dogs.

In Rhode Island, town meetings are called by the town clerk, who issues a warrant therefor addressed to the town sergeant or one of the constables of the town, directing him to post written notifications of the time and place of the meeting and of the business to be transacted. The duties of the clerk in that state relative to the registration of voters are peculiar. He is required to keep a Registry Book, furnished by the secretary of state, in which all persons who

wish to be qualified to vote are required to register. He also acts as clerk of the board of canvassers of voters.

In all the states, the town clerk prepares the official ballots required in the election of town officers, and distributes all ballots used at general as well as local elections in his town.

In Connecticut, under a provision of the state constitution, the town clerk, with the selectmen, constitute a board of admission of voters, who pass upon the admissibility of all persons who apply for admission as electors.

In Vermont, the clerk, with the selectmen and justices of the peace residing in a town, constitute the board of civil authority.

In Connecticut, he is charged with the duty of drawing jurors when directed by the clerk of the superior court of the county. In Maine, the municipal officers, treasurer, and clerk of each town constitute a board for preparing lists of jurors to be laid before the town. In Vermont, jurors are chosen by the town, and the town clerk is required to return a certificate of the election of the persons chosen to the clerk of the county court. Jurors are drawn in Massachusetts by the clerk and selectmen and the list as made up by the clerk is submitted to the town at the annual meeting. In New Hampshire, the clerk draws the names of the jurors required in the presence of the selectmen, and returns the venire with the list of jurors drawn to the clerk of the court from whom it was received. The town councils in Rhode Island perform the duty of drawing the jurors for their towns, and the town clerks make and keep the records and make returns of the jurors drawn to the clerk of the common pleas division of the supreme court of the county.

In the smaller towns in Massachusetts, the town clerk with the selectmen form the board of registrars of voters. The town clerk in towns in Rhode Island, as clerk of the town council acting as a court of probate, is the clerk of that court, and as such records its proceedings and all wills, administrations, inventories, accounts, decrees, orders, and other writings which are made, granted, or decreed upon by the court. He has the custody and safe-keeping of the seal of the court and of all books and papers belonging to the probate office.

In all the states except Maine, the clerk is custodian of the seal of the town and affixes it to all public documents to which the seal is required by law to be attached.

In Massachusetts, town clerks and all other persons having the care or custody of public records are forbidden to use or permit to be used upon any public record written by them, or under their direction, any ink except ink furnished by the state commissioner of public records. They may not use or permit to be used upon such records any ribbon, pad, or other device used for printing by typewriting machines, or any ink contained in such ribbon, pad, or device, except such as has been approved by the commissioner.

The duty of assessing taxes is performed by a board of assessors elected at the annual town meeting for one year or longer terms. In New Hampshire, the selectmen act as assessors when no assessors are elected, and in Massachusetts there is a similar provision which allows the selectmen to act when it is so voted by the town. In Vermont, the officers who perform the duties of assessment are designated listers.

The modes of assessing taxes are similar in all of the New England states, and may be briefly described as follows. The assessors or listers, as the case may be, are required to distribute at a time fixed by statute blank lists or inventories among the persons of their towns subject to taxation, or to notify such persons to bring in such lists of their property.

These blanks contain interrogatories, to be answered by the tax payer, calling for particulars of his real and personal estate. The blanks when filled and completed are signed and sworn to and returned by the tax payer to the assessors on or before a day fixed by law. Non-resident tax payers are not required to make such returns, although it is the duty of the assessors generally to send blanks for them to such persons when their addresses are known. The assessors examine the returns made to them, and, if satisfied that a return gives a true, correct, and complete statement of the property of the tax payer, they accept it as the basis of assessment; but if they have reasonable cause to believe that the return is either false or incorrectly given, they are authorized to call upon the tax payer and interrogate him personally in regard to his property.

In case of failure to obtain from the tax payer himself satisfactory information in regard to his property, the assessors are authorized to ascertain in any manner in which they are able the amount of taxable property belonging to the delinquent, and in some states to double the amount so ascertained by them as a penalty upon the tax payer. In Vermont, the dooimage is fixed by law at four times the amount so found by the listers. The failure on the part of any resident liable to be taxed in a town to make the required return, deprives him of the right to apply for an abatement of the tax assessed against him. The decisions of the assessors in such cases are final.

Appeals lie, when taken in time by persons who have made returns as required by law, from the action of the assessors, in some states to the county commissioners or the superior court, and in Vermont to the board of relief of the town.

Real estate is assessed to the owner or occupant in the town where it is situated. The rules of assessment of personal property are various, depending upon the character of the property taxed.

Taxes are collected by officers chosen annually for the purpose. In

case of failure to elect a collector, the law provides in some states that a constable may perform the duties of the office. A vacancy may in certain cases be filled by the town council in Rhode Island, or by the selectmen in other states. Town treasurers may also act as collectors.

The powers of collectors in the execution of the warrants committed to them by the assessors or selectmen, as the case may be, extend not only to the distraint of property; but they may arrest and imprison a tax payer if they fail to find sufficient property to satisfy the warrant against him. In the seizure and sale of property, as well as in the arrest of persons, for non-payment of taxes, an exact compliance with the law is required in order to justify the collector and give a good title to the purchaser of the property sold.

The collector is held to the strictest accountability in the performance of his duties. Not only may actions be brought upon his official bond, in cases of delinquency, but an extent may be issued against him by a justice of the peace for the amount of taxes collected which he fails to pay over to the proper authority as required by law. In Maine and Vermont, the state treasurer may issue a warrant against a collector for failure to pay over a state tax, committed to him for collection within the time limited by law. The town collector collects all the taxes for the county and state as well as for the town to which he belongs.

The town treasurer is the financial officer of the town. He is elected annually and serves for a term of one year in all the states except Connecticut, in which state his official term is two years. In case of a vacancy in the office or of the disability of the treasurer, the selectmen or other municipal officers are authorized to fill the office temporarily until a new treasurer can be elected by the town. In New Hampshire, the selectmen may remove from office any treasurer who in their judgment has become insane or otherwise incapacitated to discharge the duties of his office, or has neglected for ten days after written notice to furnish a bond for their acceptance. In Massachusetts, the selectmen may declare the office vacant and appoint another treasurer in case the person elected to the office fails to give bond within the time fixed by law.

The treasurer is the depositary and custodian of all the funds belonging to the town, receives taxes as they are paid over to him by the collector, and makes disbursements usually upon orders drawn upon him by the selectmen. He may act as collector of taxes in some of the states by vote of the town. In Rhode Island, the town treasurer issues to the collector the warrant for the collection of taxes. In Maine and Massachusetts, the treasurer may bring actions in his own name for damages where trespasses are committed on buildings, enclosures, monuments, or mile stones belonging to a town. It

is the duty of the treasurer also to bring suit for the use of the town for the recovery of all penalties incurred by selectmen or other officers for neglect of their official duties.

The standards of weights and measures provided for or belonging to the town are kept by the town treasurer, and, in Maine, they are the keepers of the town seal. They are the proper officers to issue a warrant against a delinquent collector for failure to collect or to pay over the taxes committed to him for collection by the assessors of the town.

The office of overseer of the poor was among the earliest created, and is one of the most important in the administration of town affairs. In the early period, the duties now performed by overseers were discharged by the selectmen, who had the care of the indigent and insane for whose support and maintenance the town had to provide.

In all the states, except Connecticut, separate officers are chosen; in that state the selectmen act as overseers. In Vermont, only one overseer is elected, and he is required to present his accounts for audit and approval monthly to the selectmen, who draw orders on the town treasurer for the payment of such accounts. As a rule, however, the overseers are responsible directly to the town for the administration of their office, although in some states they are required to make annual returns to the state board of charity.

The range of duties of overseers includes not only the care of town paupers and the relief of strangers, but also the apprenticing of the minor children of paupers. In cases of bastardy, they prosecute on behalf of their town actions against the putative fathers of illegitimate children. They have charge of poorhouses and poor farms, and carry on the farms for the benefit of the town.

In the conduct of the business of a modern New England town, certain officers play very useful and important parts, although of somewhat inferior consideration. Among these may be mentioned sealers of weights and measures, measurers of wood and bark, fence viewers, pound keepers, and keepers of the lockup. There are also inspectors of milk, petroleum, and fish, tree wardens, port wardens, and others of occasional appointment. The office of field driver, formerly known as hayward and hog-reeve, has now scarcely more than a comic significance, there being no duties attached to it, and the persons commonly selected for it being young newly-married men, and "old bachelors" who have recently become "Benedicts."

The duties of night watchmen are now performed by constables or other police officers of the town. Engineers, firewards, and enginemen, in towns which have organized fire departments, are among the most useful of the public servants of a town; their positions are not mere sinecures, as is the case with some others; while truant officers are indispensable in the enforcement of school attendance and discipline.

A New England constable is an officer of many and highly important duties. He is no mere process-server, or even like Shakespeare's Dogberry, a night watchman whose chief function is to "comprehend all vagrom men," and frustrate the nefarious schemes of thieves and burglars. He is indeed an officer of the peace and specially charged with the maintenance of order in the community to which he belongs. Although he has not the judicial authority of some other town officers, his duties being mainly executive, yet the power vested in him to arrest law-breakers without warrant, and the obligation resting upon him to prosecute violations of law, on his own initiative, involve in their exercise a large discretion. Abuse of authority is extremely rare, and efficient service is the rule in the administration of the office.

Constables in point of antiquity stand at the head of the officers of a town. They were at first appointed by the General Court, and were charged with the duty of summoning the freemen for all public meetings, both for elections and other town business. Until 1638, the constable for Plymouth was the messenger of the Court, the prototype of the sergeant-at-arms of the Massachusetts legislature. His duty was to attend the General Courts and the Courts of Assistants, to act as keeper of the jail, to execute punishment, to give warnings of such marriages as were approved by authority, to seal weights and measures, and measure out such land as was ordered by the governor or government. He was also the collector of rates and taxes, and is still empowered in several of the states to act as collector of taxes in the absence of any other officer chosen for that purpose.

They are chosen annually at the annual town meeting to serve for one year, and are required to give bond for the faithful performance of their duties. The amount of the bond is regulated in Connecticut by the population of the town; and in Massachusetts, by the amount of damages laid in the writs which they are called upon to serve. In Maine and Rhode Island, it is fixed by statute at a uniform sum. In Vermont, it is determined by the selectmen, and in New Hampshire by the selectmen or the town. When acting as collectors of taxes, they are required to give bonds in sums proportioned to the amounts of money to be collected.

The number to be chosen is fixed by statute or left to be determined by vote of the town. In Massachusetts, the selectmen are authorized to appoint, in addition to those elected by the town, as many constables as they deem necessary. In New Hampshire, all police officers are by virtue of their appointment constables and conservators of the peace. In Rhode Island, the town council are required to appoint special constables to aid in the enforcement of the liquor laws, and may appoint others to assist in the execution

of the laws concerning dogs. In default of election by the town, it is the duty of the council to appoint the constables.

Their jurisdiction is in most matters limited to the town or county to which they belong, but in Vermont, when the town so votes, they are authorized to serve and execute any process within the state, returnable to any court. In Maine, the constable has no authority beyond the limits of his town, except for the purpose of retaking an escaped prisoner, the execution of a *mittimus*, the taking of a person before a court or trial justice, or the pursuit of a person for whose arrest he has a warrant into another town. In Massachusetts, summonses, or other processes for witnesses in criminal cases, running throughout the Commonwealth, may be served by a constable in any city or town where a witness may be found.

They are the executive officers of police and justice courts, and in Massachusetts, of the district courts. In Maine and New Hampshire, they perform like duties in courts of probate. Venires for jurors are committed to constables for service on municipal officers, and they serve the summonses on persons drawn as jurors. Warrants for town meetings are usually addressed to a constable, and it is his duty to post notices of the meetings or otherwise summon the voters as directed by the town officers, or the by-laws of the town. It is their duty generally to notify officers chosen at the town meeting of their election, and to summon them to appear before the town clerk to be sworn.

In Vermont, it is the duty of the constable to warn meetings of the freemen for the election of state officers and representatives to Congress, and the first constable is the collector of taxes in his town. In that state, towns choose ordinarily but one constable, but have power to choose a second one, if they so vote. Special constables may be appointed when necessary by the selectmen, to preserve the peace or for the security of life and property.

The first constable, acting under the direction of the board of civil authority, fits up the polling-places with voting-booths for the use of voters, and at general elections acts as the presiding officer. It is his duty to preserve order at town meetings and elections, and to protect election officers from interference by others in the performance of their duties; and he may arrest without warrant any person detected in the act of violating the caucus or election laws.

They execute all orders and warrants issued by the selectmen for the killing of dogs not licensed and collared according to law. They act as truant officers when others are not specially appointed for that duty, and are empowered to arrest tramps and other vagrants and disturbers of religious and other meetings, and to disperse riotous assemblies.

As officers of the peace, in general, they are charged with the

duty of prevention of disorder and the prevention and suppression of crime, and may arrest on view and without a warrant, violators of the law.

The police power of towns extends to all matters affecting public order, the preservation of the peace, and all necessary sanitary regulations in the town. The town constables ordinarily perform the duties of enforcing town by-laws, ordinances, and regulations, but power is vested in the selectmen to appoint police officers, with limited authority and removable at the pleasure of the appointing board. In Rhode Island, the power of appointment is exercised by the town councils. In Massachusetts, authority is given to the selectmen of towns to make requisition upon the mayor of any city to provide police officers on special occasions for duty in their towns.

In New Hampshire, the police officers of a town may make regulations for the stand of hacks, drays, and carts in the public streets; for the height and position of awnings, shades, or fixtures on the fronts of buildings; respecting any obstruction in streets or alleys and the smoking of cigars or pipes therein, or in any stable or other outbuilding; and for determining the time of night at which saloons, eating houses, and restaurants shall be closed, and prohibiting the keeping open of such places on the Lord's Day. Such regulations, however, are subject to approval by the selectmen.

In Vermont, the town grand jurors are the peace officers of the town and are especially charged with the duty of inquiring into and presenting before the proper authority offenses against the law, which may come to their knowledge within the town, or within an organized town or gore adjoining the town, which in their judgment ought to be prosecuted. The charters of villages provide for the appointment of police officers within their limits.

In Connecticut, the power of appointment of railroad and steamboat police, which in other states is given to the selectmen or town councils, is vested in the governor, who, upon application of such corporations, commissions, during his pleasure, one or more persons designated by the corporation, who, having been duly sworn, may act at its expense as policemen upon the premises used by it in its business, or upon its cars or vessels. Such policemen are required to wear when on duty, in plain view, a shield bearing the words "railroad police," "street railway police," or "steamboat police," as the case may be, and the name of the corporation for which they are commissioned.

Thus have been briefly sketched the origin, development and more important features of the town system of New England. Although this survey is limited to that portion only of the United States, the

system itself has a much broader interest and application. The whole political life of the country is based upon the town-meeting principle.

It is true that local government in Virginia and others of the original thirteen states, although springing from the same source, has, as the result of local conditions, developed in a different way from that of the northern colonies, the county holding the place which in New England belongs to the town.

A mixed system prevails in the Middle States. There is no primary assembly like the town meetings of New England; and the county overshadows the township; but the latter chooses its local officers and acts only by and through them.

But in the great States of the Middle West and Northwest, to which their New England settlers have brought the civil and political institutions of their places of nativity, the town system has gained a strong foothold. In Illinois, which may be taken as a typical example, the people of a county may vote to adopt the system, and when it has been adopted, the county is divided by the commissioners into towns.

The town officers, which are chosen at the annual town meeting of the whole voting population, consist of a supervisor, who is *ex officio* overseer of the poor, a clerk, an assessor and a collector of taxes, three commissioners of highways, two justices of the peace, and two constables. The supervisor is also a county officer, and not only manages the town business but is a member of the county board, which is composed of the supervisors of the several towns, and has general control of the county business.

Michigan has a similar system; likewise have Wisconsin, Minnesota, the Dakotas, Nebraska, and the states of the Pacific Slope; and it seems likely to become general through all the newer states of the West. It is nowhere an exact reproduction of the New England type, but everywhere presents its essential features.

The importance, therefore, especially to Americans, of a careful study of a system of such widespread application and influence cannot well be overestimated. A scheme of local autonomy which has proved itself so well suited to the genius of a great nation, and is so easily adapted to the changing needs of its people, deserves not only the highest praise as an instrument of government, but as an object of study, challenges the best thought of students of political institutions.

MASSACHUSETTS

MASSACHUSETTS.

INTRODUCTORY.

In spite of the rival claims for other states to the honor of having founded the town system of New England, the weight of evidence seems fairly in favor of Massachusetts as the leader in the establishment of that system, if not its originator. The causes which gave this leadership to the Bay colony were many and various. The most potent of them was perhaps the early superiority of that colony in the number and wealth of its population, and the great influence of Winthrop, Endicott, Cotton and other leaders, during the formative period in which town government was assuming permanent shape.

The results of this dominating influence are seen in the strong resemblance between the towns of other states and those of Massachusetts. There are more points of identity than of difference in the system as developed in the several states. The causes of the variations may be found in the differences of situation and conditions under which the system has been developed in different localities. To this rule of uniformity one exception is found in Rhode Island, which has always stood somewhat apart from the other states in the constitution and character of its local government.

Whether or not we accept the theory of the old or of the new, historical school, as to the origin of the town system, there can be little doubt that the institutions as we find them to-day of our local government are the product of the requirements of time and place, extending through the whole period of our history.

The towns which were established in the different colonies had common experiences in dealing with the practical problems of government in the early years of their existence, and solved them in substantially the same way. All attempted at first to manage their local affairs by means of fortnightly or monthly meetings of the freemen; but, finding this to be impracticable, after a comparatively short period, they determined to shift the burden from the shoulders of the whole community and place it upon those of a few of their number. The experiment first tried by different towns in the Bay, was confirmed by the action of the central authority, the Colony Court, which authorized in 1636 the election of "townsmen," or selectmen, in whom was vested full power to manage the prudential affairs of the towns.

Selectmen first appear in town records in 1631, in Dorchester, when twelve men were elected to serve the town for one year. Plymouth

(town) adopted the plan in 1649 by choosing "seven discreet men." This was followed in 1665 by an order of the General Court, which limited the number to three or five, to be chosen by the townsmen out of the freemen of the town. The name does not appear on the records of Boston until November, 1643, and two years later John Winthrop and nine others were chosen to the office.

It was an epoch-making step in the evolution of town government; and from that time to the present, the functions of town administration have been chiefly discharged by the selectmen. The duties devolving upon these officers as defined by the "Body of Liberties," in 1641, and subsequent legislation, were for many years limited to the "prudential occasions of the town;" but they have been enlarged and extended to cover a vast variety of matters, including the appointment of minor officers and the control of important departments of town business, which have come into existence in recent years.

Other town offices have been created in the lapse of years, as the business of government has become more complex, until the range of official life in some of the larger towns is nearly as great as that of any of the cities of the Commonwealth.

It may be stated in a general way that the development of the town system has been more complete in Massachusetts than in any other state of New England. This may be due in part to the limitation fixed by law for the transformation of a town into a city, the possession of twelve thousand inhabitants being a condition precedent. The further fact of the greater economy of town as distinguished from city, government has no doubt had a large influence in the continuance of the town system. Another consideration is found in the spirit of conservatism which has always characterized the people of the Commonwealth. They are devoted to old forms and usages, are disposed to "let well enough alone," and prefer "to bear the ills they have than fly to others that they know not of."

There are several towns in the state of large population and wealth, which still adhere to the old system in spite of the fact that by reason of the great numbers of voters, the town meeting has become an unwieldy body, and deliberate action is well-nigh impossible. Some towns have been forced to abandon the system by the change in the character of their population, alien elements having come in which are incapable of understanding or performing the duties of citizenship.

The continuance of the system under conditions of wealth and population such as are found in the larger towns would not be possible were it not for the practice of the Legislature of granting, upon petition of the voters, various privileges and powers, which enable towns to deal with such problems as water supply, drainage and street lighting, which call for large expenditures of money and special boards of management.

These enabling acts have come to be a prominent feature of municipal government in New England, and, in no state more successfully than in Massachusetts, have they been adapted to supply the deficiencies of the town system. These special grants of power enable towns to accomplish ends of administration that without them could be gained only by the creation of minor corporations, such as the boroughs of Connecticut, or the village corporations of Maine.

The disposition on the part of the state legislature to interfere either by general laws having special application, or by special acts, with the independence of towns in the management of their local concerns is not as great in Massachusetts, or indeed in any of the New England states, as in some other states of the Union. Local self-government has been a tradition in New England for so long a period, and has been enjoyed by so large a proportion of the population of every state, that there seems to be a more general respect for the rights of the individual citizen than exists in some other parts of the country.

Some new methods have lately been tried and others have been proposed which, it is hoped, will meet the demand now felt in the larger towns of the Commonwealth, for a change of the system of voting both at elections and upon questions of local policy. One of these plans is for the creation of an advisory committee whose duty it shall be to prepare for presentation to the town a scheme or program of annual appropriations for the different departments of public affairs. It is thought that such a budget, framed by competent hands and well digested by the town officers before it is submitted to the voters, will furnish a safeguard against hasty and ill-considered action in the town meetings.

Another method of solving the difficulties of administering town affairs for a large population has been adopted by Brookline, the largest and wealthiest town in the Commonwealth, having nearly four thousand registered voters. It is embodied in a special act passed by the state legislature in 1901. Under the provisions of this act, any vote passed at any original or adjourned meeting, to which seven hundred or more legal voters have been admitted, shall, upon petition, be submitted to the voters at large, for ratification at a subsequent town meeting, except that votes for moderator, or for any town, county, state, or national officer, or on any proposition on which by any special or general law of the Commonwealth, a yea or nay vote by the voters of the town at large is required to be taken by ballot, shall be final.

In order to exercise this right of referendum, a petition must be filed with the town clerk within five days from the final adjournment or dissolution of the town meeting, signed by at least one hundred legal voters of the town, requesting that a vote or votes passed at such meeting be submitted to the voters of the town at large for ratifica-

tion. At the expiration of the five days mentioned, the selectmen are required to call forthwith a town meeting for the purpose of submitting the votes specified in the petition to the voters at large. In submitting such votes, the selectmen may in their discretion include any or all of the votes passed at the meeting relating to the same subject-matter, and for that purpose, a vote to borrow money is held to relate to the same subject-matter as the vote or votes to appropriate the money to be borrowed.

Any vote thus submitted for ratification which receives a majority of the votes cast thereon is held to be ratified; otherwise, it has no force or effect, provided that if any vote required for its original passage more than a majority, a like proportion is required for its ratification.

In order to ascertain the number of legal voters present at a town meeting, registering turn-stiles may be used at the door, and none but registered voters are admitted to the meeting. The turn-stiles are in charge of police officers who from long service have become acquainted with the faces of the voters; and their presence serves as a restraint upon persons, not voters, who might desire to obtain entrance to the meeting. The number of such persons who unlawfully gain admission is so small as to be practically of no moment.

In the pages that follow are given the statutes of the Commonwealth in force relating to towns, and decisions, including volume 188, of the reports of the Supreme Judicial Court, bearing upon them.

STATUTES.

[References not otherwise designated are to Revised Laws, 1902, as amended.]

TOWN OFFICERS IN GENERAL.

All town officers are chosen or appointed from among the inhabitants of the town; and removal from the town by any officer vacates the office which he holds. The term of office of town officers is usually one year, but certain officers may, under special provisions of the law, be chosen for longer terms.

Compulsory Service.—As a rule, any citizen of a town may be required to serve in any town office to which he may be chosen or appointed. There are, however, certain exceptions. No person is required to serve two terms successively in the same office, and of certain offices two or more cannot be held by the same person at the same time. The office of constable cannot be held by a person holding certain other offices under the United States or the Commonwealth, and a person cannot be required to serve in the office who has been a constable or collector of taxes in the town within the preceding seven years. No person can be required to serve as surveyor of highways oftener than once in three years.

Official Oath; Bonds.—Town officers are generally required to be sworn before they enter upon their duties, and persons duly summoned to take the official oath, who fail so to do within the time prescribed by law, are held to have forfeited their right to the office to which they have been chosen. Certain officers are required to give bond to the town conditioned for the faithful performance of their duties with sureties to the satisfaction of the selectmen. Towns may vote to pay the expense of furnishing such surety in cases where it is given by a fidelity corporation.

Vacancies.—In case of a failure by a town to choose a town officer at the annual meeting, or if a person does not accept an office, or a vacancy occurs, the town may at any legal meeting elect a person to such office, with the exception that if the assessors of a town or the selectmen acting as such, shall in any year fail to perform their duties, the county commissioners may appoint three or more inhabitants of the county to be assessors for such town, to hold office until the offices of assessors are filled by the town. In other cases where vacancies occur, they are filled *ad interim* by the selectmen.

The selectmen are also empowered to fill certain other offices by appointment, such as firewards, inspectors of hay, lime, milk, petroleum,

and some others who are strictly speaking not "town officers," according to the statutory definition, as they are not subject to be chosen at a town meeting.

Women are eligible for overseers of the poor and school committee.

Certain officers are required to be chosen by ballot, but the election of others may be in such manner as the town may determine; and a town may vote that the selectmen shall act as overseers of the poor, or assessors, or both.

Compensation.—The compensation of town officers is usually fixed by vote of the town, but in some cases the law provides for a minimum *per diem* compensation for specific services, and fixes certain fees, as in the case of town clerks and constables, for certain services performed by those officers.

ASSESSORS OF TAXES.

Election.—Every town, at its annual meeting, is required to choose by ballot three or more assessors of taxes to serve during the year, and, if the town so votes, three or more assistant assessors.

The law also provides that a town at any annual meeting or at a meeting held at least thirty days before the annual meeting at which such change is to become operative, may vote to elect three or more assessors for terms varying from one to three years, and after the first election one or more members of the board shall retire and one or more members shall be chosen each year, to serve for the term of three years.

If the number of assessors, however, is four, the town is required to elect two assessors for terms of one year and two for terms of two years, and at each annual meeting thereafter two assessors to serve for terms of two years. C. 11, SS. 334, 339, 340.

Where a town chooses three assessors, two of whom are sworn and the third does not refuse to accept the trust, but omits to take the oath of office, and when called upon by the other two declines to act, and the town does not choose another in his stead, the other two have authority to assess the taxes *George v. School District*, 6 Met. 497.

Compensation.—Each assessor shall be paid by his town two dollars and fifty cents a day for every whole day in which he is employed in that service, and such additional compensation as the town shall allow. C. 12, S. 99.

Where a town votes that its assessors shall be allowed a certain gross sum for their services during the year, they are not entitled to the *per diem* compensation allowed by the statute.—*Moody v. Newburyport*, 3 Met. 431.

Assessors are public officers. Towns have no authority to direct or control them. In case they do not perform their duties, the town has no remedy against them. They are not in any sense the agents or servants of the town, and the town by the election of assessors enters into no contract with them for the payment of their services.—*Walcott v. Swampscott*, 1 Allen, 101; *Hafford v. New Bedford*, 16 Gray, 297; *Barney v. Lowell*, 98 Mass. 570.

An assessor is entitled to receive from the town two dollars and a half a day for his services: and such other compensation as the town may allow.—*Walker v. Cook*, 129 Mass. 578.

Abatement of Taxes.—A person aggrieved by the taxes assessed upon him may, within six months after the date of his tax-bill, apply to the assessors for an abatement thereof; and if they find that he is taxed at more than his just proportion, or upon an assessment of any of his property in excess of its fair cash value, they shall make a reasonable abatement. A tenant of real estate paying rent therefor and under obligation to pay more than a moiety of the taxes thereon may apply for such abatement. *Ibid.*, S. 73.

Where one is overrated by the assessors, whether by including property of which he is not the owner, or that for which he is not liable to be taxed, his only remedy is by an application for an abatement.—*Osborn v. Danvers*, 6 Pick. 98; *Harrington v. Glidden*, 179 Mass. 486; *Hamilton Manfg. Co. v. Lowell*, 185 Mass. 114.

If a person pays an illegal tax in order to prevent the issuing of a warrant of distress, he pays under duress, and may recover back the money by an action of assumpsit.—*Preston v. Boston*, 12 Pick. 7.

If a trustee, possessed of personal property for which he is liable to be taxed, is improperly taxed for a larger amount than he otherwise would be on account of the trust property, his only remedy is by application to the assessors for an abatement.—*Bates v. Boston*, 5 Cush. 93.

The only remedy for a tax-payer in a case in which certain personal property was wrongfully included in the valuation list of the assessors is by application for an abatement.—*Lincoln v. Worcester*, 8 Cush. 55; *Oliver v. Lynn*, 130 Mass. 144; *Hicks v. Westport*, *Ibid.* 478.

Where a portion of the tax assessed to a person is legal, the excess being an overvaluation, his only remedy is by application to the assessors for an abatement.—*Bourne v. Boston*, 2 Gray, 494; *Davis v. Macy*, 124 Mass. 193; *Richardson v. Boston*, 148 Mass. 512.

Assessors have no power to abate a tax after their term has expired.—*Cheshire v. Howland*, 13 Gray, 321.

Where the assessors assent to the delay of a tax-payer in bringing in his list, failure to bring it in within the time prescribed by law is no ground for dismissing a petition for the abatement of a tax.—*Lowell v. County Commissioners*, 3 Allen, 546.

One who is properly assessed for real estate in a town and other real estate without, by mistake, and pays the tax on the latter, cannot recover it back. His proper remedy is by application for an abatement of the tax.—*Salmond v. Hanover*, 13 Allen, 119; *Kelley v. Boston*, 174 Mass. 396; *Schwarz v. Boston*, 151 Mass. 226.

Assessors of a town may abate a tax assessed by the assessors of the preceding years.—*Carleton v. Ashburnham*, 102 Mass. 348.

One who by mistake returns to the assessors property exempt from taxation is not thereby estopped to claim an abatement.—*Charlestown v. County Commissioners*, 109 Mass. 270.

Where two cities were united by statute, the right to the uncollected taxes of one was transferred to the other without express provision for abatement of those taxes. *Held*, that the statute was not for that reason void, as abatements could be made under the general laws of the commonwealth.—*Stone v. Charlestown*, 114 Mass. 224.

If certain distinguishable items of a tax on personal property, assessed by a town to non-residents, are improperly assessed there, the only remedy is by application for an abatement.—*Norcross v. Milford*, 150 Mass. 237; *Richardson v. Boston*, 148 Mass. 512, and cases there cited.

A tax-payer who brings in a list with all requisite particulars of his taxable property is not entitled to an abatement because the assessors value the items in gross instead of separately.—*Lowell v. County Commissioners*, 152 Mass. 372.

The word "person" in the statute extends to a corporation.—*National Bank v. New Bedford*, 155 Mass. 313.

Interest can be recovered on an abated tax only from the date of demand for repayment.—*Boott Cotton Mills v. Lowell*, 159 Mass. 383.

The omission from a list made and filed in good faith, of a single item of property, if honestly made, will not defeat the application of the person bringing it in for an abatement of the tax.—*Wright v. Lowell*, 166 Mass. 298.

If part of a tax assessed against a person upon his real estate is valid although the rest of the real estate assessed to him be not taxable, the remedy is by petition for abatement, and not by bill in equity.—*Kelley v. Barton*, 174 Mass. 396; *Bates v. Sharon*, 175 Mass. 293.

Certificate.—A person whose tax has been abated shall be entitled to a certificate thereof from the assessors, clerk of the commissioners or other proper officer. C. 12, S. 83.

Conditions.—A person shall not have an abatement, except as otherwise provided, unless he has brought in to the assessors the list of his estate as required by section forty-one. An executor, administrator or trustee after three years from the date of his appointment, or a tenant of real estate paying rent and under obligation to pay more than a moiety of the taxes thereon, may have an abatement although no such list was brought in. If such list is not filed within the time specified in the notice required by section forty-one, no part of the tax assessed upon the personal estate shall be abated unless the applicant shows to the assessors a reasonable excuse for the delay or unless such tax exceeds by more than fifty per cent the amount which would have been assessed upon such estate if the list had been seasonably brought in, and in such case only the excess over such fifty per cent shall be abated. If the applicant was not required by said notice to include his real estate in said list, and has not done so, he shall, if he seeks an abatement of the tax on his real estate, file with his application a list, verified as provided in section forty-three, of his real estate, with an estimate of the fair cash value for each parcel. *Ibid.*, S. 74.

It is no good cause for not bringing in a list that the party assessed was a corporation; or, that the estate assessed was owned in part by non-residents; or, that the assessors have waived, which they have no power to do, the bringing in of a list.—*Winnisimmet Co. v. Chelsea*, 6 Cush. 477.

The list should be brought in before the tax is assessed.—*Porter v. County Commissioners*, 5 Gray, 365.

The list cannot be filed after an appeal from the assessors to the county commissioners.—*Otis Company v. Ware*, 8 Gray, 509; *Charlestown v. County Commissioners*, 101 Mass. 87.

A list showing the boundaries and quantity of a parcel of real estate held sufficient.—*Charlestown v. County Commissioners*, 1 Allen, 199.

Where the assessors expressly assented to the delay and the list was brought in verified by oath, before the petition for abatement was filed, it was held that the delay in filing the list was no ground for dismissing a petition for abatement.—*Lowell v. County Commissioners*, 3 Allen, 546.

A list of a tax-payer's estate liable to taxation made and filed in good faith entitles the tax-payer to be heard upon a question of abatement, although the list contains unintentional omissions and inaccuracies.—*Great Barrington v. County Commissioners*, 112 Mass. 218.

A list enumerating in detail the real and personal property of a tax-payer in the town, held sufficient, notwithstanding the jurat failed to state that it contained all his property liable to taxation there.—*Lanesborough v. County Commissioners*, 131 Mass. 424.

The right to abatement extends to additional assessments.—*Noyes v. Hale*, 137 Mass. 272.

In a case where a person paid a tax upon church property held by him in trust, as well as upon land of his own, it was held that his only remedy was by abatement.—*Schwarz v. Boston*, 151 Mass. 226.

A list with the name of each shareholder, his residence, and the number of his shares, satisfies in the case of national banks the requirements of the statutes.—*National Bank of Commerce v. New Bedford*, 155 Mass. 213.

Statute 1888, c. 315, § 1, is not intended to apply to tenants who are also part owners of real estate for which they pay rent.—*Ashley v. County Commissioners*, 166 Mass. 216.

A list filed by a corporation owning a yarn and cloth mill describing the real estate as "one stone mill and cloth room with water power, 21,744 mule spindles, 21,952 ring frame spindles" held a sufficient compliance with the law, the assessors not having required any further description of the property.—*Troy Cotton Manufactory v. Fall River*, 167 Mass. 517.

Non-residents may bring in a list at any time before filing a petition for abatement.—*Hopkins v. Reading*, 170 Mass. 568.

The sworn list of the decedent testator held by the executors of his will on May 1 and filed on June 9 as of May 1 was held sufficient.—*Batchelder v. Cambridge*, 176 Mass. 384.

A notice in writing given by assessors of taxes to a petitioner for an abatement of their decision that he may have leave to withdraw is adverse to him, from which he may appeal under Statute 1890, c. 127.—*Brodvine v. Revere*, 182 Mass. 598.

The machinery of a manufacturing corporation is to be taxed as personal property, and must be valued separately from the lands and buildings of the corporation. If the latter are overvalued the corporation is entitled to abatement.—*Hamilton Mfg. Co. v. Lowell*, 185 Mass. 114.

An application to the assessors of a city or town for an abatement of taxes need not be in writing.—*Page v. Melrose*, 186 Mass. 361.

Corporate Franchise Tax.—Whenever an abatement is finally made to any corporation organized under the laws of the commonwealth, upon any tax assessed upon or in respect of real estate, machinery, or underground conduits, wires and pipes, the assessors granting such abatement shall forthwith notify the tax commissioner, stating what sum was determined to have been the full and fair cash value of such property on the first day of May on which the tax so abated was originally assessed. Acts of 1904, C. 442.

Notice.—The assessors shall, within ten days after their decision upon an application for an abatement, give written notice thereof to the applicant. C. 12, S. 76.

Street Sprinkling Assessments.—A town having more than three thousand inhabitants which has accepted laws enabling it to do so may annually appropriate money for watering its public streets and may provide that its assessors may assess upon the estates abutting on the streets so watered the whole or any part of the cost thereof, and such assessments, unless previously paid, shall be certified by the assessors to the collector of taxes, who shall include it in the next tax bill for an annual tax upon such estate, and the same shall be a lien upon such estate, and shall be considered as constituting a part of the taxes on

real estate, and be levied, collected and paid or abated in like manner. C. 25, S. 22.

Local or special assessments like this do not come within the exemptions from general taxation.—*Phillips Academy v. Andover*, 175 Mass. 118; *Seamen's Friend Society v. Boston*, 116 Mass. 181.

Aggregates Returned to Secretary of the Commonwealth.—The assessors shall fill up the table of aggregates by an enumeration of the necessary items included in the lists of valuation and assessment required by law, and shall annually, on or before the first day of October, deposit in the office of the secretary of the commonwealth an attested copy of the same, containing details required by the statute. *Ibid.*, S. 60.

Apportionment Certificate.—Assessors shall, upon application to any one of them by a person assessed therein, give to him a certificate stating what portion of the whole amount of his tax is assessed as state tax, county tax and town tax, respectively. *Ibid.*, S. 97.

When additional assessments are made, it is proper, if not necessary, that a new warrant be issued containing apt reference to the taxes thus added to the tax list.—*Noyes v. Hale*, 137 Mass. 273.

Assessment, Amount.—The assessors shall annually assess taxes to an amount not less than the aggregate of all amounts appropriated, granted or lawfully expended by their respective towns since the last preceding annual assessment and not provided for therein, of all amounts which are required by law to be raised by taxation by the said towns during said year and of all amounts necessary to satisfy final judgments against the said towns; but such assessments shall not include liabilities for the payment of which towns have lawfully voted to contract debts. The assessors may deduct the amount of all the estimated receipts of their respective towns, except from loans or taxes, which are lawfully applicable to the payment of the expenditures of the year from the amount required to be assessed; but such deduction shall not exceed the amount of such receipts during the preceding year.

The assessors of a town owing debts incurred to obtain funds for subscriptions for the capital stock and securities of a railroad corporation shall annually assess, in addition to the other amounts required by law, an amount sufficient to pay the excess of such interest payable by such town, over any income received from such stock or securities. C. 12, SS. 37, 38.

A town cannot raise by taxation, or pay from its treasury, money for expenses incurred in opposing before the legislature the annexation of the whole or any part of its territory to another town.—*Coolidge v. Brookline*, 114 Mass. 592.

Bank Shares.—All the shares of stock in banks, whether of issue or not, existing by authority of the United States or of the commonwealth, and located within the commonwealth, shall be assessed to the owner thereof in the town in which such bank is located, and not elsewhere,

in the assessment of state, county and town taxes, whether such owner is a resident of said town or not. They shall be assessed at their fair cash value on the first day of May, first deducting therefrom the proportionate part of the value of the real estate belonging to the bank, at the same rate as other moneyed capital in the hands of citizens is by law assessed. The persons who appear from the books of the banks to be owners of shares at the close of the business day last preceding the first day of May shall be deemed to be the owners thereof. C. 14, S. 9.

A state may tax shares held in national banks organized therein under United States Stat. of 1864, c. 106, and may authorize the assessment of such tax in the city or town, within the same state where the owner resides.—*Austin v. Aldermen of Boston*, 14 Allen, 359; *Goldberg v. Warwick*, 112 Mass. 384.

The assessment of taxes by any state upon the shares of a national bank established in any other state is prohibited by United States Stat. of 1864, c. 106, § 41.—*Flint v. Aldermen of Boston*, 99 Mass. 141; *Van Allen v. Assessors*, 3 Wall. 573; *Abbott v. Bangor*, 54 Maine, 540.

The statute of 1868, c. 349, upheld, which provides that all shares of stock in banks created by authority of the United States owned by non-residents shall be assessed to the owners in the cities or towns where such banks are located.—*Providence Institution v. Boston*, 101 Mass. 575.

A mutual life insurance company held not liable to taxation on national bank shares owned by it under Stat. 1868, c. 349, § 4.—*Murray v. Berkshire Life Ins. Co.*, 104 Mass. 586.

The statute of 1872, c. 321, did not apply to the estates of deceased persons.—*Revere v. Boston*, 123 Mass. 375.

National bank shares held by residents of a regularly organized fire-district in the town where the bank is located cannot be subjected to a tax assessed for fire-district purposes.—*Rich v. Packard National Bank*, 138 Mass. 527.

The market value of the shares as ascertained by a commissioner held to be the "fair cash value" of them.—*National Bank v. New Bedford*, 155 Mass. 315; *Ibid.*, 175 Mass. 262.

National Banks, Rate.—Assessors of towns in which a national bank or banking association is located shall, for the purpose of ascertaining the rate at which taxes shall be assessed, omit from the valuation upon which the rate is to be based the value of all shares held by non-residents of said towns, and no tax of any town shall be invalidated by reason of any excess, in consequence of the provisions of this section, of the amount of such tax over the amount to be raised. C. 12, S. 36.

Statute upheld.—*Institution for Savings v. Boston*, 101 Mass. 575.

Names of Shareholders.—The cashier of every such bank shall make and deliver to the assessors of the town in which it is located, on or before the tenth day of May in each year, a statement under oath showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of the business day last preceding the first day of May, as the same then appeared on the books of said bank. If the cashier fails to make such statement, said assessors shall forthwith obtain a list of the names and residences of shareholders and of the number of shares belonging to each. They shall forthwith, upon obtaining such statement or list, transmit a copy thereof to the tax commissioner; and shall, immediately upon the ascertainment of the

rate per cent upon the valuation of the total tax in such town for the year, give to said commissioner written notice thereof, and also of the amount assessed by them upon the shares of each bank located therein. C. 14, S. 12.

Shareholders Reimbursed.—The assessors of a town, upon request of any person resident therein who is the owner of any shares in such banks or other corporations which, under the provisions of clauses nine and ten of section five of chapter twelve, would be entitled to exemption from taxation, shall give to him a certificate stating such fact. *Ibid.*, S. 18.

Corporate Property, Return to Tax Commissioner.—Assessors shall annually, on or before the first Monday of August, return to the tax commissioner the names of all corporations, except banks of issue and deposit, having a capital stock divided into shares, chartered by the commonwealth or organized under the general laws for the purposes of business or profit and established in their respective towns or owning real estate therein, and a statement in detail of the works, structures, real estate and machinery owned by each of said corporations and situated in such town, with the value thereof, on the first day of May preceding, and the amount at which the same is assessed in said town for the then current year. They shall also, at the same time, return to the tax commissioner the amount of taxes laid, or voted to be laid, within said town, for the then current year, for state, county and town purposes. They shall also, at the same time, return to the tax commissioner the names of all foreign corporations which have a usual place of business within said town. C. 12, S. 93.

Failure of the assessors and of the tax commissioner to comply with the provisions of this section will not invalidate a tax assessed upon the franchise of a corporation, under the statute.—*Commonwealth v. New England Slate and Tile Co.*, 13 Allen, 391.

The corporate franchise tax and the local tax on the property of a corporation are not complementary. The determination by the tax commissioner of the value of the real estate and machinery does not bind the assessors of the town where they are situated.—*Tremont & Suffolk Mills v. Lowell*, 178 Mass. 469.

Diminished Valuations, Report Causes.—If the assessors of a town ascertain that the aggregate valuation of such town has been diminished since the first day of May of the preceding year, they shall return with the table of aggregates, or with the books, which they are required by sections sixty and sixty-one to deposit in the office of the secretary of the commonwealth, a statement in writing, under oath, of the causes which in their opinion have produced such diminution. *Ibid.*, S. 94.

Discounts.—Towns at their annual meetings may allow discounts to persons making voluntary payment of their taxes within such periods of time as they determine; and the assessors shall, when they commit their warrant to the collector, post in one or more public places in the

city or town notices of the rates of discount, and the collector shall make such discount. *Ibid.*, S. 71.

A person who pays his tax and obtains a discount cannot maintain an action against the town to recover back the amount on the ground that the tax was illegal.—*Lee v. Templeton*, 13 Gray, 476.

Nor can he recover it back on certain other grounds, stated in *Tobey v. Wareham*, 2 Allen, 594.

Executor, Last Assessment to Govern.—After personal property has been legally assessed in any town to an executor, administrator or trustee, an amount not less than that last assessed by the assessors of such town in respect of such property shall be deemed to be the sum assessable, until a true list of such property is brought in to the assessors in accordance with the provisions of section forty-one. *Ibid.*, S. 50.

If an executor fails to bring to the assessors the list required by law, he is liable to the amount assessed against him.—*Vaughan v. Street Commissioners*, 154 Mass. 143.

EXEMPTIONS.

The following property and polls shall be exempted from taxation. *Ibid.*, S. 5.

The Western Railroad Corporation held not subject to be taxed for the land, five rods in width, nor for buildings and structures erected thereon reasonably incident to the support of the road, or its proper and convenient use.—*Worcester v. Western R. R. Corp.*, 4 Met. 564; *Boston v. Boston and Albany Railroad*, 170 Mass. 95.

A new location of the Fitchburg Railroad Company duly made and filed in conformity with its actual construction under Stat. 1855, c. 240, exempts the land within its limits from taxation.—*Charlestown v. County Commissioners*, 1 Allen, 199.

A tax payable to the treasurer of the commonwealth may be imposed on the excess of the market value of all the capital stock above the value of the real estate and machinery of a corporation, taxable in the city or town in which it is situated.—*Commonwealth v. Hamilton Manufacturing Co.*, 12 Allen, 75.

Land acquired by a city by authority of the legislature for the purpose of supplying the city with pure water and used for that purpose only is justly taken by right of eminent domain, and is not liable to taxation.—*Wayland v. County Commissioners*, 4 Gray, 500; *Miller v. Fitchburg*, 180 Mass. 32.

Land of a county used for county purposes is exempt from taxation.—*Worcester County v. Worcester*, 116 Mass. 193; *Essex County v. Salem*, 153 Mass. 141.

Land purchased by a city within the limits of another city for the purpose of obtaining gravel for the construction and repair of streets in the city so purchasing, and thereafter used for that purpose, is exempt from taxation.—*Somerville v. Waltham*, 170 Mass. 160.

Bonds or obligations of the United States held by individuals or corporations are not subject to taxation under state legislation.—*The Banks v. The Mayor*, 7 Wall. 16.

Shares of a domestic manufacturing corporation purchased by the corporation itself and held for its benefit by a trustee residing in a city of this commonwealth, the shares being outstanding, are not taxable either to the corporation or the trustee; and the city in which the trustee resides is not entitled to be paid by the commonwealth any part of the franchise tax collected from the corporation as corresponding to the amount of stock so held.—*Worcester v. Board of Appeal*, 184 Mass. 460.

Land taken under the right of eminent domain for a highway or for railroad purposes is not taxable to the owner of the fee.—*Lancy v. Boston*, 186 Mass. 128.

First. The property of the United States.

Second. The property of the commonwealth, except real estate of which the commonwealth is in possession under a mortgage for condition broken.

Third. The personal property of literary, benevolent, charitable and scientific institutions, and of temperance societies incorporated within this commonwealth, the real estate owned and occupied by them or their officers for the purposes for which they are incorporated, and real estate purchased by them with the purpose of removal thereto, until such removal, but not for more than two years after such purchase. Such real or personal property shall not be exempt if any of the income or profits of the business of such corporation is divided among the stockholders or members, or is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes, nor shall it be exempt for any year in which such corporation wilfully omits to bring in to the assessors the list and statement required by section forty-one. C. 12, S. 5, cls. 1, 2, 3.

A house owned by Harvard College and let to one of its professors at an annual rent held not an occupation of the real estate of the college by one of its officers bringing it within the exemption from taxation provided by the statute.—*Pierce v. Cambridge*, 2 Cush. 611; *Harvard College v. Cambridge*, 175 Mass. 145; *Williams College v. Williamstown*, 167 Mass. 505.

Taxes upon property held in trust by the "trustees of the Greene Foundation" are properly assessed to that corporation, and not to the minister receiving the income.—*Trustees of the Greene Foundation v. Boston*, 12 Cush. 54.

A farm and the farming stock owned by a literary institution incorporated within this commonwealth for educational purposes, occupied and used solely for such purposes, are exempt from taxation.—*Trustees of Wesleyan Academy v. Wilbraham*, 99 Mass. 599; *Mt. Hermon School for Boys v. Gill*, 145 Mass. 139; *Emerson v. Trustees of Milton Academy*, 185 Mass. 414.

United States internal revenue stamps are not subject to state or local taxation as property, nor as stock in trade.—*Palfrey v. Boston*, 101 Mass. 329; *Mass. General Hospital v. Somerville*, 101 Mass. 319.

The exemption extends to assessments for the alteration and improvement of a street on which land of the college abuts.—*Harvard College v. Boston*, 104 Mass. 470.

The upper stories of Holyoke House, a building owned by Harvard College, are appropriated for students and used for purposes within the college charter; they are therefore exempt from taxation. The lower story, which is used for other purposes, is not exempt.—*Cambridge v. County Commissioners*, 114 Mass. 339.

The exemption of the real estate of charitable institutions from taxation extends only to taxation imposed for the general purposes of government and not to taxation for local improvements.—*Boston Seamen's Friend Society v. Boston*, 116 Mass. 181; *Worcester Agricultural Soc. v. Worcester*, 116 Mass. 189; *Boston Asylum v. Street Commissioners*, 180 Mass. 485.

Land upon which lodging-houses were built and let to tenants at the usual rates of rent, held not exempt from taxation, notwithstanding the proceeds were devoted to the charitable uses named in the charter of the owner, a corporation for religious and charitable purposes.—*Chapel of the Good Shepherd v. Boston*, 120 Mass. 212; *Lynn Workingmen's Aid Assn. v. Lynn*, 136 Mass. 283.

The words "benevolent" and "charitable" are not limited to human beings, but apply to an institution which educates men to be humane in dealing with domestic animals.—*Massachusetts Society, etc. v. Boston*, 142 Mass. 24.

An accumulating fund held in trust for the future benefit of an incorporated educational institution is exempt from taxation.—*Williston Seminary v. County Commissioners*, 147 Mass. 427.

Real estate owned by a corporation organized for the education and religious instruction of children, but not occupied by it and entirely controlled and supported by others, is not exempt from taxation.—*St. James Educational Institute v. Salem*, 153 Mass. 185; *Salem Lyceum v. Salem*, 154 Mass. 15.

A society whose principal income is derived from a fixed regular compulsory contribution from its members, and constituting a fund to be used exclusively for the benefit of its members, cannot be held to be either a benevolent or a charitable society within the meaning of the statute.—*Young Men's Benevolent Soc. v. Fall River*, 160 Mass. 412.

Where the paramount object of a corporation is the dissemination of theosophical ideas and procuring converts thereto, it cannot be held to be a literary, benevolent, charitable, or scientific institution within the meaning of the statute.—*New England Theosophical Corp. v. Boston*, 172 Mass. 60.

Occupancy for the purposes for which the institution is incorporated is a question to be settled in each case, but should be determined mainly by the consideration of whether such occupancy is for the benefit chiefly of the officer or of the institution.—*Phillips Exeter Academy v. Andover*, 175 Mass. 123.

Real estate occupied by a charitable institution for the purpose for which it was incorporated, but owned by a third person, is not exempt from taxation.—*Bates v. Sharon*, 175 Mass. 296.

The property of Bowdoin College is not exempt from taxation in this commonwealth, and therefore is subject to the collateral inheritance tax imposed by Statute 1891, c. 425.—*Rice v. Bradford*, 180 Mass. 545.

The keeping of a dormitory and boarding-house for students of a scientific institute, by a literary or scientific corporation other than the institute itself, is not an educational purpose within the meaning of P. S., c. 11, § 5, cl. 3, exempting from taxation the property of such corporation. The fact that some literary or scientific work is done in it does not change the result, if the dominant use of the building is for a dormitory or boarding-house.—*Phi Beta Epsilon Corporation v. Boston*, 182 Mass. 457.

The exemption of the real estate of a literary institution from taxation does not exempt real estate used to produce income to be expended for the purposes of the institution, but does exempt real estate used for one of such purposes, and, if this is the dominant purpose, it is immaterial that there may be incidental results which would not entitle the property to exemption.—*Emerson v. Milton Academy*, 185 Mass. 414.

A corporation organized under P. S., c. 115 "to provide a home for working girls at moderate cost," having no capital stock and not dividing its income or profits among its members, can be found to be a charitable institution within the meaning of the statute, and its property be exempt from taxation.—*Franklin Sq. House v. Boston*, 188 Mass. 409.

Fourth. The real and personal estate of incorporated agricultural societies and the portions of real estate and buildings of incorporated horticultural societies used for their offices, libraries and exhibitions. *Ibid.*, cl. 4.

Fifth. The real and personal estate of any grand army or veteran association, incorporated within this commonwealth for the purpose of owning property for use and occupation by posts of the grand army of the republic, to the extent of twenty thousand dollars, if it is actually used and occupied by such association and the net income from said property is used for charitable purposes in aid of needy soldiers of the war of the rebellion and their dependents; but it shall not be exempt for

any year in which such association wilfully omits to bring in to the assessors the list and statement required by section forty-one.

Sixth. The Bunker Hill Monument.

Seventh. Houses of religious worship owned by, or held in trust for the use of any religious organization and the pews and furniture; but the exemption shall not extend to portions of such houses appropriated for purposes other than religious worship or instruction. *Ibid.*, cls. 5, 6, 7.

Such distinct tenements only are exempted as are used for religious worship and purposes connected therewith, and not tenements, though under the same roof, which are used for purposes wholly secular.—*Lowell Meeting House v. Lowell*, 1 Met. 538.

A lot purchased for the purpose of building a house of worship *held* to be exempt from taxation when only piles for a foundation had been placed upon it.—*Trinity Church v. Boston*, 118 Mass. 164.

A religious society having leased for two years its meeting-house and purchased another lot of land on which a church edifice was begun. The pulpit, organ and pews were removed from the meeting-house and not replaced, and no attempt was made to put the house in condition suitable for public worship. A tax was assessed upon the premises while in this condition. *Held*, that the property was not exempt from taxation.—*Old South Soc. v. Boston*, 127 Mass. 378.

The fact that a lot of land owned by a benevolent or charitable corporation may at some indefinite future time be occupied for the purpose for which the corporation was incorporated does not exempt it from taxation. Some actual appropriation of the land for the given purposes must be unequivocally shown.—*Redemptorist Fathers v. Boston*, 129 Mass. 178.

A parsonage erected for a religious society on its land for the use of its ministers rent free is not exempt from taxation.—*Third Congregational Soc. v. Springfield*, 147 Mass. 396.

Property held in trust by the Salem Marine Society for the purpose of erecting and supporting a Bethel Church for the accommodation of seamen to have the Gospel preached to them is not exempt from taxation.—*Salem Marine Society v. Salem*, 155 Mass. 329.

A lot purchased for a house of worship was partly used by the erection of a temporary building for church purposes. The part so used *held* to be exempt from taxation; the residue of the lot held not exempt until the construction of the church has begun.—*All Saints Parish v. Brookline*, 178 Mass. 404.

Eighth. Cemeteries, tombs and rights of burial, so long as they shall be dedicated to the burial of the dead. *Ibid.*, cl. 8.

No land can be deemed to be dedicated for the purposes of a cemetery so as to be exempt from taxation, or used or appropriated for the purpose of a burial ground, which has not been devoted or set apart and some active measures taken towards preparing it for a burial place. A mere dedication or appropriation on paper is not enough.—*Woodlawn Cemetery v. Everett*, 118 Mass. 354.

A sewer assessment cannot be laid upon a cemetery corporation's land which, by its charter, is perpetually set apart as a burial place for the dead, and can neither be sold, used for profit, nor appropriated for any other purpose.—*Mount Auburn Cemetery v. Cambridge*, 150 Mass. 12.

In a case where by special act of the legislature a cemetery corporation was authorized to purchase property to be devoted exclusively to the purposes connected with and appropriate to the objects of the corporation for which the land was bought; and although there was a dwelling-house with barns upon it, and no burial lots were laid out, it was *held* to be exempt from taxation.—*Rural Cemetery v. County Comrs.*, 152 Mass. 408.

Ninth. The property, to the amount of five hundred dollars, of a widow, of an unmarried woman above the age of twenty-one years, of a person above the age of seventy-five years or of any minor whose father is deceased, whether such property be owned by such persons separately, or jointly, or as tenants in common: *provided*, that the whole estate, real and personal, of such person does not exceed in value the sum of one thousand dollars, exclusive of property otherwise exempted under the provisions of this section. No property shall be so exempt which the assessors shall adjudge has been conveyed to such person to evade taxation. A person aggrieved by such judgment may appeal to the county commissioners within the time and in the manner allowed by the provisions of section seventy-seven.

Tenth. The polls and any portion of the estates of persons who by reason of age, infirmity and poverty are in the judgment of the assessors unable to contribute fully toward the public charges. *Ibid.*, cls. 9, 10.

The assessors may abate a poll tax of their own motion in a case such as is specified in the statute, and the regularity of their action or the sufficiency of their record cannot be tried in a mandamus proceeding against the collector.—*Gordon v. Sanderson*, 165 Mass. 375.

Eleventh. The wearing apparel and farming utensils of every person; his household furniture not exceeding one thousand dollars in value; and the necessary tools of a mechanic not exceeding three hundred dollars in value. *Ibid.*, cl. 11.

The exemption of household furniture applies to all the furniture appertaining to a dwelling-house, including that used for boarders.—*Day v. Lawrence*, 167 Mass. 371.

Twelfth. Mules, horses and neat cattle less than one year old, swine and sheep less than six months old and domestic fowls not exceeding fifteen dollars in value.

Thirteenth. The property of the following classes of persons to the amount of two thousand dollars in the case of each person, provided the whole estate, real and personal, of the person so exempted does not exceed in value the sum of five thousand dollars, and provided further that only two thousand dollars shall be exempted to any one family, and that the combined property of the family does not exceed five thousand dollars: First. Soldiers and sailors who served in the military or naval service of the United States in the war of the rebellion and who were honorably discharged therefrom and who, by reason of injury received or disease contracted while in such service and in the line of duty, lost the sight of both eyes, or lost the sight of one eye, the sight of the other having been previously lost, or who lost one or both feet, or one or both hands. Second. Soldiers and sailors who served as aforesaid and were honorably discharged as aforesaid, and who, as the result of disabilities contracted while in such service and in the line of duty, have become permanently incapacitated for the performance of manual labor to an

extent equivalent, in the judgment of the assessors, to the loss of a hand or foot. Third. Wives or widows of soldiers or sailors who would be entitled to exemption under either of the two preceding paragraphs.

The certificate of the granting of a pension to any such soldier or sailor by the United States for such injury or disability shall, while such pension continues, be sufficient evidence of the receiving of such injury or disability; but the assessors may receive other evidence thereof. A person aggrieved by the judgment of the assessors may appeal to the county commissioners, within the time and in the manner allowed by the provisions of section seventy-seven. *Ibid.*, cls. 12, 13.

Co-operative Banks.—The capital stock, corporate franchises and personal property, but not the real estate, of co-operative banks, shall be exempt from taxation. C. 14, S. 23.

Entry on Valuation List.—The assessors shall enter upon the valuation list, in the appropriate columns, after the enumeration of the persons and estates liable to taxation therein contained, a statement and description of all the property and estate and the fair ratable value thereof, situated in their respective towns, or which would be taxable there but for the provisions of the third, fourth and seventh classes of section five, with the names of the persons or corporations owning the same and the purpose for which it is used, which are exempted from taxation by the provisions of law aforesaid, with a reference to the law by which such exemption is allowed. C. 12, S. 64.

Returns to Tax Commissioner.—Assessors shall annually, on or before the first day of October, make and forward to the tax commissioner a statement showing the whole amount of exempted property entered upon the valuation lists of their respective towns in accordance with section sixty-four, and the amount in each class, and stating separately the aggregate amount belonging to each of the four classes embraced in clause three of section five, a tabular statement of the statistics derived from the returns provided for in section eight, and such lists and statements required by section forty-two relative to real and personal property exempt from taxation under clause three of section five as have been received by them.

Assessors of each town shall annually, on or before the first Monday of August, return to the tax commissioner the aggregate amount of its assets, and the amount of its indebtedness, for which notes, bonds or similar evidences of debt, the payment of which is not provided for by the taxation of the then current year, were outstanding on the first day of May then last preceding, with a concise statement of the various purposes for which such indebtedness was incurred, the amount incurred for each purpose and the amount of each sinking fund established. If in any case in which a sinking fund is required by law no sinking fund has been established, the return shall state whether action has been had

under the provisions of section thirteen of chapter twenty-seven and the amount raised and applied thereunder for the year last preceding said first day of May. *Ibid.*, SS. 95, 96.

Ships and Vessels.—Ships and vessels engaged in the foreign carrying trade, whether actually so engaged at the time of assessment or then in port undergoing repairs, shall not, for the purpose of taxation, be included in the personal estate of persons to be taxed; but the net yearly income of such ships and vessels shall be taxable to the owners thereof in their respective places of residence, in proportion to their several interests therein.

The foregoing exemption shall not apply to any ship or vessel, unless its agent or owner annually, on or before the first day of June, returns in writing under his oath, to the assessors of each city and town in the commonwealth in which an owner of any share or interest in the ship or vessel resided on the first day of May in said year, the name of such owner, the name, class and tonnage of the ship or vessel, the fact that it was on said first day of May engaged in the foreign carrying trade within the meaning of the preceding section, the share or interest of such owner therein, and the dividends paid to him upon his said share or interest during the year ending on said first day of May; and such dividends shall constitute the net yearly income to be taxed to such owner as provided in said section. *Ibid.*, SS. 7, 8.

Timber Trees.—All plantations of chestnut, hickory, white ash, white oak, sugar maple, European larch and pine timber trees, in number not less than two thousand trees to the acre, upon land at the time of such planting, not wood land or sprout land, and not having been such within five years previously, the actual value of which at the time of planting does not exceed fifteen dollars per acre, shall with the land be exempt from taxation for ten years after said trees have grown in height four feet on the average upon satisfactory proof by the owners to the assessors of these facts. *Ibid.*, S. 6.

Fire District, Assessments.—The assessors of a town in which a fire district is organized shall have the powers and perform the duties relative to the assessment of the money voted by the fire district, as they have and exercise relative to the assessment and abatement of town taxes, and the sums voted by the district shall be assessed upon the polls and property, real and personal, within the district. C. 32, S. 63.

Stocks in banks and other corporations outside owned by an inhabitant of a fire district may be assessed in the district.—*Dwight v. Springfield Centre Fire District*, 11 Met. 374; *contra*, *Rich v. Packard National Bank*, 138 Mass. 527.

Fire Engine Men, Lists Certified.—The assessors are required to examine the lists of persons who have served in the fire department, as furnished to them by the chief engineer or other officer, and certify

to the treasurer of their town the amount to be paid to each person named therein. *Ibid.*, S. 34.

Illegal Assessments, Part Invalid.—If, by reason of an erroneous or illegal assessment or apportionment of taxes, a person is assessed more than his due proportion, the tax and assessment shall be valid except as to the illegal excess. C. 12, S. 91.

A person aggrieved by an illegal tax has a plain, adequate, complete, and exclusive remedy at law. Equity will not intervene to restrain the collection of a tax.—*Loud v. Charlestown*, 99 Mass. 208.

The collector is protected by the warrant, notwithstanding the illegality of the assessment; he is not bound to examine into the legality of previous proceedings.—*Cone v. Forrest*, 126 Mass. 98.

An imperfection in the valuation list is not sufficient to invalidate the tax.—*Westhampton v. Searle*, 127 Mass. 502.

Itinerant Vendors, Valuation Certificate.—The assessors are required forthwith after examination and valuation of goods, wares and merchandise set forth in the statement submitted to them by the selectmen, to transmit a certificate thereof to the selectmen. C. 65, S. 6.

Land Taken by the Town, Assessed.—If land is taken or purchased by a town, taxes shall be assessed thereon as though the same were not so taken or purchased; and shall be deducted from the proceeds of the final sale. C. 13, S. 66.

List, Blanks Filled.—The assessors shall enter in the books so furnished the valuation and assessment of the polls and estates of the inhabitants assessed, as directed in the headings of the various columns. C. 12, S. 59.

Many of the requirements of the statute are intended for the information of the assessors, are directory, and a non-compliance with the mode of proceeding does not affect the rights of the tax-payer, nor the validity of the tax.—*Westhampton v. Searle*, 127 Mass. 502; *Bemis v. Caldwell*, 143 Mass. 299; *Lowell v. County Commissioners*, 152 Mass. 386.

Lists, Estimates in Default of.—They shall ascertain as nearly as possible the particulars of the personal estate, and of the real estate in possession or occupation, as owner or otherwise, of any person who has not brought in such list, and shall estimate its just value, according to their best information and belief. *Ibid.*, S. 47.

It is not the duty of the tax-payer to bring in a list, but if he fails to do so, he cannot have the remedies provided by law, and the estimate of his property made by the assessors is conclusive upon him.—*Lincoln v. Worcester*, 8 Cush. 63.

The assessors' estimate is sufficient where the tax-payer fails to bring in a list of his property.—*Tobey v. Wareham*, 2 Allen, 594.

If the assessors, in default of a list filed by the tax-payer, are unable to ascertain the particular kinds or items of such taxable property, an estimate of it may be made as "personal property" without any enumeration of particulars.—*Noyes v. Hale*, 137 Mass. 270.

A tax-payer, who has brought in a list containing all the requisite particulars of his taxable property, is not entitled to an abatement because the assessors value the items in gross instead of separately, as directed by the statute.—*Lowell v. County Commissioners*, 152 Mass. 372.

It is immaterial that a person who has not furnished a list to the assessors is not the actual owner of the property assessed to him.—*Harwood v. North Brookfield*, 130 Mass. 565.

The decision of the assessors as to the nature and amount of taxable property of a person who has not brought in a list cannot be attacked in a collateral proceeding, and can be changed only in a proceeding for an abatement.—*Harrington v. Glidden*, 179 Mass. 486.

Conclusive, When.—Such estimate shall be entered in the valuation book, and, except as provided in sections forty-one and seventy-four, shall be conclusive upon any person who has not seasonably brought in a list of his estate, unless he can show a reasonable excuse for the omission. *Ibid.*, S. 48.

In making such estimate the assessors shall specify the amount of each class of personal property mentioned in clauses eight, nine, ten and eleven, in section sixty, and enter the same upon the books furnished under section fifty-eight. An error or over-estimate of any class shall not be taken into account in determining whether a person is entitled to an abatement, but only the aggregate amount of such estimates. *Ibid.*, S. 49.

Open to Inspection.—Such lists shall be open to the inspection of the assessors, their assistants and clerks and of the tax commissioner and his deputy, but so much of the lists as shows the details of the personal estate to that of no other person except by the order of a court. The lists shall be preserved by the assessors until the tax commissioner orders them to be destroyed. C. 12, S. 44.

Taken as True.—The assessors shall receive as true, except as to valuation, the list brought in by each person, unless, on being thereto required by them he refuses to answer on oath all necessary inquiries as to the nature and amount of his property. *Ibid.*, S. 46.

The assessors are to receive as true the enumeration, description, occupancy, and other particulars of the real estate of the tax-payer.—*Lincoln v. Worcester*, 8 Cush. 64.

But not if it appears upon an examination of the person who brings in the list that it is not true.—*Hall v. County Commissioners*, 10 Allen, 100.

The right to abatement is not defeated by mere inaccuracy in the list filed. Objections by the assessors as to irregularities in the list, first made before the county commissioners, are too late.—*Great Barrington v. County Commissioners*, 112 Mass. 218.

A list omitted to state that it was all the tax-payer's property liable to taxation, but the jurat was in the usual form. *Held*, that there was a substantial compliance with the law.—*Lanesborough v. County Commissioners*, 131 Mass. 424.

When a person has seasonably filed a schedule purporting to be a true list of all his property and has made oath to the same, the assessors have no right to add to the list other property for which they consider him taxable and assess him thereon, without making any inquiries of him in relation thereto.—*Moors v. Street Commissioners*, 134 Mass. 431.

An omission of a single item from a tax list made and filed in good faith, if honestly made, will not defeat the application of the person bringing it for an abatement of the tax assessed. Nor will a refusal of the person to answer upon oath all necessary inquiries as to her property by the assessors prevent her applying for and obtaining such abatement.—*Wright v. Lowell*, 166 Mass. 298.

Verified by Oath.—The assessors shall in all cases require a person bringing in a list to make oath that it is true. The oath may be administered by any of the assessors or by their secretary or head clerk. If the person bringing such list is absent from the place in which the tax is to be assessed during the whole period when such oath may be made, it may be administered by a notary public, whose jurat shall be duly authenticated by his seal. *Ibid.*, S. 43.

A person cannot have an abatement of tax before filing with the assessors the list required by law.—*Charlestown v. County Commissioners*, 101 Mass. 87.

The jurat reciting that "the statement and valuation is correct and true according to his best knowledge and belief," attached to a list filed with the assessors, was held to be sufficient.—*Lanesborough v. County Commissioners*, 131 Mass. 424.

Lowlands, Abatement as Nuisance, Cost Assessed.—The expense of making and keeping improvements of swamp lands shall be assessed upon the persons benefited thereby as ascertained by the decision of the board of health. C. 75, S. 79.

Assessments by a board of health held void for want of proper notice of the hearing to the parties affected.—*Grace v. Newton Board of Health*, 135 Mass. 490.

Ministerial Fund.—Real estate held by a religious society as a ministerial fund shall be assessed to its treasurer in the town in which it lies. Personal property so held shall be assessed in the town in which such society usually holds its meetings. C. 12, S. 25.

Both the personal and real property of a religious society is taxable, even although the income is used to support religious worship.—*Society in Salem v. Bradford*, 185 Mass. 312; *Greene Foundation v. Boston*, 12 Cush. 54; *Redemptorist Fathers v. Boston*, 129 Mass. 178; *Third Congregational Society v. Springfield*, 147 Mass. 396.

Mortgagor or Mortgagee, Return by.—A mortgagor or mortgagee of real estate may bring in to the assessors of the city or town in which it lies, within the time prescribed by the notice under section forty-one, a statement under oath of the amount secured thereon or on each separate parcel thereof, with the name and residence of every holder of an interest therein as mortgagor or mortgagee. If such property is situated in two or more places, or if a recorded mortgage includes two or more estates or parts of an estate as security for one sum, such statement shall include an estimate of the interest of the mortgagee in each estate or part of an estate. The assessors shall, from such statement or otherwise, ascertain the proportionate interests of the mortgagor or mortgagee respectively in said estates, and shall assess the same accordingly. If, in any year, such statement is not brought in, the tax for that year on such real estate shall not be invalid merely for the reason that the interest of the mortgagee therein has not been assessed to him. *Ibid.*, S. 45.

Notice of Assessment.—Assessors before making an assessment shall give seasonable notice thereof to all persons, firms and corporations, domestic or foreign, subject to taxation in their respective towns. Such notice shall be posted in one or more public places in each town, or shall be given in some other sufficient manner, and shall require the said persons, firms and corporations to bring in to the assessors, before a date therein specified, in case of residents a true list of all their polls and personal estate not exempt from taxation, and in case of non-residents and foreign corporations a true list of all their personal estate in that town not exempt from taxation, and may or may not require such list to include their real estate which is subject to taxation in that town. It shall also require all persons and corporations, except corporations making returns to the insurance commissioner as required by section nineteen of chapter one hundred and eighteen, to bring in to the assessors before a date therein specified, which shall not be later than the first day of July then following, unless the assessors for causes shown extend the time to the first day of August, true lists of all real and personal estate held by them respectively for literary, temperance, benevolent, charitable or scientific purposes on the preceding first day of May, or at the election of such corporation on the last day of its financial year last preceding said first day of May, and to state the amount of receipts and expenditures for said purposes during the year last preceding said days. The notice shall contain the provisions of section forty-five. *Ibid*, S. 41.

The valuations put upon the property by the tax-payer in his list are not conclusive on the assessors who are to exercise their own judgment in estimating the value of the property. Gives a historical review.—*Newburyport v. County Commissioners*, 12 Met. 211.

The requirement as to bringing in a list of taxable property applies to corporations equally with individuals. In default of such a list the tax-payer cannot have an abatement of his tax. The list cannot be filed after appeal to the county commissioners.—*Otis Company v. Ware*, 8 Gray, 509; *Charlestown v. County Commissioners*, 101 Mass. 87.

A list returned seasonably by the Fitchburg Railroad Company, acting by its treasurer, gave the quantity of land and its boundaries, generally, without further particulars. The statement was sworn to by the treasurer. It was held sufficient.—*Charlestown v. County Commissioners*, 1 Allen, 199.

The apportionment and return to the assessors required by the charter of a charitable corporation, held to be a substitute for the list required by the statute.—*Greenfield v. County Commissioners*, 135 Mass. 566.

Omitted Assessments.—If the real or personal estate of a person, to an amount not less than one hundred dollars and liable to taxation, has been omitted from the annual assessment of taxes in a town, the assessors shall between the fifteenth and twentieth day of December next ensuing assess such person for such estate. The taxes so assessed shall be entered on the tax list of the collector who shall collect and pay over the same. Such additional assessments shall not render the tax of

such town invalid although its amount, in consequence thereof, shall exceed the amount authorized by law to be raised. *Ibid.*, S. 85.

An additional assessment is not a new tax but an amendment of the annual assessment. Overvaluation includes the valuation of property not owned or possessed by the party taxed.—*Harwood v. North Brookfield*, 130 Mass. 565.

It is not necessary to ascertain and specify the particular items of property in laying the additional assessment.—*Noyes v. Hale*, 137 Mass. 272.

Overlay.—The assessors may, for the purpose of avoiding fractional divisions of the amount to be assessed in the apportionment thereof, add to that amount not more than five per cent thereof, although the limit of taxation may by such overlay be exceeded. C. 12, S. 55.

Partners, how Taxed.—Partners, whether residing in the same or in different cities or towns, may be jointly taxed under their firm name, in the place where their business is carried on, for all the personal property employed in such business, except ships or vessels. If partners have places of business in two or more towns, they shall be taxed in each of such places for the proportion of property employed therein. If so jointly taxed, each partner shall be liable for the whole tax. *Ibid.*, S. 27.

The term, "place of business," signifies a place where business is carried on by the parties under their own control and on their own account.—*Little v. Cambridge*, 9 Cush. 298; *Palmer v. Kelleher*, 111 Mass. 320.

The interest of an inhabitant of Massachusetts as a partner in the property of a firm established and carrying on business in another state is taxable here.—*Bemis v. Boston*, 14 Allen, 366.

The McKay Sewing Machine Association held to be a copartnership, and the personal property held by it was properly taxable in Boston where its business was carried on.—*Hoadley v. County Commissioners*, 105 Mass. 526.

Three resident trustees of a vessel cannot be taxed jointly in a place where they do not reside.—*Stinson v. Boston*, 125 Mass. 352.

A partner of a dissolved firm cannot recover back taxes assessed after the dissolution, unless he can show that when the taxes were assessed the affairs of the firm had been wound up or there was no taxable property of the firm remaining undisposed of.—*Oliver v. Lynn*, 130 Mass. 143.

A partner who retires from a firm before the first day of May, and thereafter takes no part in the management of its affairs, and retains no interest in the property, is not liable for a tax assessed on that day on the personal property of the partnership.—*Washburn v. Walworth*, 133 Mass. 499.

The New England Car Trust was shown to be a copartnership formed to purchase rolling stock. The property was delivered to a trust company as trustee, which issued certificates to the members of the trust, and executed leases to a railroad company. The business of the trust was carried on in Boston. Held, that the property was taxable in Boston.—*Ricker v. American Loan & Trust Co.*, 140 Mass. 346.

Plaintiffs' place of business held not to be at C., because they had their work done under contract in a penal institution there. Their principal place of business was in Boston.—*Cloutman v. Concord*, 163 Mass. 444. See also *Parker v. Watertown*, 137 Mass. 277, and *Duxbury v. County Commissioners*, 172 Mass. 383.

Ships.—Ships or vessels owned by a partnership shall be assessed to the several partners in their places of residence, if within the commonwealth, proportionally to their interests therein; but the interests of the several partners who reside without the commonwealth shall be

assessed to the partnership in the place where its business is carried on. *Ibid.*, S. 28.

Copartnership owners of a vessel are assessed at their several places of residence in proportion to their several interests.—*Stinson v. Boston*, 125 Mass. 348; *Bemis v. Boston*, 14 Allen, 366.

Personal Estate, how Assessed.—All personal estate, within or without the commonwealth, shall be assessed to the owner in the city or town in which he is an inhabitant on the first day of May, except as provided in chapter fourteen and in the following clauses of this section. *Ibid.*, S. 23.

One of the fixed rules as to domicile is this: that a purpose to change, unaccompanied by actual removal or change of residence, does not constitute a change of domicile. The fact and the intent must concur. An inhabitant of the commonwealth who removes from the town of his residence, intending never to reside there again, but to remove to another state, is liable to taxation in that town as long as he remains in the commonwealth.—*Bulkley v. Williamstown*, 3 Gray, 493.

Cases showing what constitutes change of domicile.—*Thorndike v. Boston*, 1 Met. 242; *Mead v. Bowborough*, 11 Cush. 362; *Wright v. Boston*, 126 Mass. 161; *Weld v. Boston*, *Ibid.* 166; *Borland v. Boston*, 132 Mass. 89; *Dickinson v. Brookline*, 181 Mass. 195.

To constitute occupation of a manufactory, shop, store, or wharf, there must be actual possession, use and efficient control of it—such as one who owns or hires would ordinarily have.—*Lee v. Templeton*, 6 Gray, 579.

A corporation which is taxed in the town where its real estate and machinery are situated, for such property and also for its stock in trade and other personal property, and pays the whole tax, may recover back the tax on stock in trade and other personal property.—*Dunnell Manufacturing Co. v. Pawtucket*, 7 Gray, 277.

A person residing in W., who hired a shop and carried on his trade in B., held not liable to be assessed on his stock in trade in B. for money to build a school-house in the district where he resided.—*Bates v. School District*, 9 Gray, 433.

A foreign corporation authorized to hold real estate here is taxable for stock employed in manufactures in a town in this state where it carries on business.—*Blackstone Manufacturing Co. v. Blackstone*, 13 Gray, 488.

So a non-resident is liable to taxation in the town where he hires or occupies manufactories, stores, shops, or wharves.—*Leonard v. New Bedford*, 16 Gray, 292.

The estate of an annuitant entitled to income on the first of May must pay the whole tax even though she dies shortly after that date.—*Holmes v. Taber*, 9 Allen, 246.

Persons not residing in a town and having therein no store, shop, or wharf, are not subject to taxation there by reason of hiring a yard in which they keep and sometimes sell lumber and have put up a small building for the use of their men.—*Loud v. Charlestown*, 103 Mass. 278.

A mutual life insurance company is not taxable for national bank shares owned by it in the town of Pittsfield.—*Murray v. Life Insurance Company*, 104 Mass. 586.

The furniture of an inn is taxable to the innkeeper only in the town of which he is an inhabitant.—*Charlestown v. County Commissioners*, 109 Mass. 270.

An owner of bank shares is rightfully taxed for them in the town where she resides, notwithstanding by an honest mistake she has notified the cashier of the bank that she lives in a different town.—*Goldsburg v. Warwick*, 112 Mass. 384.

The motive leading to a change of domicile is not material.—*Thayer v. Boston*, 124 Mass. 148.

Trustees, as joint owners with others of a ship, cannot be taxed with the latter at a place where they do not reside.—*Stinson v. Boston*, 125 Mass. 348.

A foreign corporation had a place of business in the commonwealth where it kept personal property pledged to it as collateral security for loans made upon it, which it sold when not redeemed. *Held*, that such a place of business was a "shop" and the property so used and pledged was "stock in trade," for which the corporation was taxable.—*Boston Loan Co. v. Boston*, 137 Mass. 332.

A foreign corporation having an office and doing business in a city of this commonwealth cannot be taxed on money deposited by it with a national bank in that city, and the provisions of this section do not apply to it.—*Boston Investment Co. v. Boston*, 158 Mass. 461.

In the ordinary relation between broker and customer, when stocks are bought on a margin, the legal title to them is in the broker and they are taxable to him.—*Chase v. Boston*, 180 Mass. 458.

First. Goods, wares, merchandise and other stock in trade, except ships or vessels owned by a copartnership, and stock employed in the business of manufacturing or of the mechanic arts in cities or towns in the commonwealth, other than those in which the owners reside, whether such owners reside within or without the commonwealth, shall be taxed in the cities or towns in which the owners hire or occupy manufactories, stores, shops or wharves, whether such property is in said places or elsewhere on the first day of May of the year when the tax is assessed. C. 12, S. 23, cl. 1.

Manufacturing corporations are not taxable for their personal property, except machinery.—*Glass Company v. Boston*, 4 Met. 181; *Worcester v. Board of Appeal*, 184 Mass. 465.

A person who occupies, temporarily, an office or place of business in a town other than that in which he resides, is taxable in the place of his residence.—*Huckins v. Boston*, 4 Cush. 543; *Field v. Boston*, 10 Cush. 65.

The stock in trade must be domiciled in the place where the owner has his store or shop in order to be taxable to him there.—*Hittinger v. Boston*, 139 Mass. 17.

A foreign corporation kept a stock of sewing machines in its store at L. for the purpose of sale or letting. *Held*, that they were stock in trade.—*Singer Manufacturing Co. v. County Commissioners*, *Ibid.* 266; *Lee v. Templeton*, 6 Gray, 579; *Blackstone Manfg. Co. v. Blackstone*, 13 Gray, 491; *Palfrey v. Boston*, 101 Mass. 329; *North Hampton v. Co. Comrs.*, 145 Mass. 110.

A portable saw-mill temporarily located in a town on the first of May is not taxable there as "machinery employed in any branch of manufactures."—*Ingram v. Cowles*, 150 Mass. 155.

The keeper of a railroad stockyard had personal property, including hay and grain for feeding the stock, but did not live or occupy a store or shop at the yard. *Held*, that the personal property was not taxable in the town.—*Farrell v. Hathaway*, 151 Mass. 242.

Debts due are not goods, wares, and merchandise, and other stock in trade within the meaning of the statute.—*New York Biscuit Company v. Cambridge*, 161 Mass. 326.

An executor who keeps his testator's former shop open, and sells goods therefrom, occasionally replenishing the stock, although for the sole purpose of settling the estate and closing the business, is taxable for the stock in the city where the shop is hired, although the testator had dwelt elsewhere.—*Cotton v. Boston*, *Ibid.* 8.

Second. Machinery employed in any branch of manufactures including machines used or operated under a stipulation providing for the payment of a royalty, or compensation in the nature of a royalty, for the privilege of using or operating the same, and all personal property within the commonwealth leased for profit, shall be assessed where such

machines or such personal property are located, to the owner or any person having possession of the same on the first day of May. If machinery, located in a city or town other than that of which the owner is an inhabitant, is assessed therein and it is also assessed in the place of which the owner is an inhabitant, he may pay the taxes in the place where the machinery is located, and upon proof thereof to the collector of the place whereof he is an inhabitant, he shall be relieved from the payment of taxes therein on said machinery; but the place of which the owner is an inhabitant may bring suit against the place where the machinery is located to determine to which place the tax lawfully belongs. *Ibid.*, cl. 2.

A gas light company is not a public corporation in the sense that its property is exempt from taxation in the city or town where it is situated. Gas pipes owned by the company and used for distributing gas through the streets and meters used for measuring gas to consumers are "machinery" and their value is to be deducted from the market value of the capital stock to ascertain the amount of the state tax to be assessed on the corporation.—*Commonwealth v. Lowell Gas Light Co.*, 12 Allen, 75.

Shares of a foreign manufacturing corporation owned by citizens of the commonwealth are taxable here at their full value.—*Dwight v. Boston*, 12 Allen, 316; *Kidd v. Alabama*, 188 U. S. 731.

An aqueduct corporation is not a manufacturing corporation, so as to render its pipes, gates, shut-offs, cocks, and faucets machinery.—*Dudley v. Jamaica Pond Aqueduct Corpn.*, 100 Mass. 183.

An inhabitant of B. cut and stored ice in C. and W. where he had houses and machinery for storing the ice. *Held*, that the cutting of ice was not manufacturing and the ice houses were not "stores" within the meaning of the statute.—*Hittinger v. Westford*, 135 Mass. 258.

Movable copper rolls and dies used in a calico-printing factory for printing cotton cloth are not necessarily machinery for purposes of taxation within the purview of the statute.—*Lowell v. County Commissioners*, 152 Mass. 377; *Troy Cotton, etc., Manufactory v. Fall River*, 167 Mass. 522.

Quarrying and breaking up stone for use on roads and other similar purposes is not a manufacturing business within the meaning of the statute.—*Wellington v. Belmont*, 164 Mass. 142.

Personal property leased for profit in a city within the commonwealth and owned by a foreign corporation is taxable.—*Lamson Consolidated, etc., Co. v. Boston*, 170 Mass. 354.

Third. Horses, mules, neat cattle, sheep and swine kept throughout the year in cities or towns other than those in which the owners reside, whether such owners reside within or without the commonwealth, and horses employed in stages or other vehicles for the transportation of passengers for hire shall be assessed to the owners in the places where they are kept. *Ibid.*, cl. 3.

An incorporated street railroad company is not taxable for horses or other personal property used in and necessary for the prosecution of its business.—*Middlesex Railroad Co. v. Charlestown*, 8 Allen, 330.

A non-resident who is taxed as a resident on all his personal property cannot recover back a tax paid by him under protest, if he had horses and cattle kept in the town assessing the tax and liable to taxation there. The only remedy is by an application for abatement.—*Hicks v. Westport*, 130 Mass. 478.

The owner of a farm situated in two towns, his house being in one and his barn in the other, is taxable in the latter town for his horses which are kept, fed, and watered in the barn, although used on the entire farm.—*Pierce v. Eddy*, 152 Mass. 594.

Fourth. Personal property belonging to persons under guardianship shall be assessed to the guardian in the city or town of which the ward is an inhabitant unless the ward resides and has his home without the commonwealth, in which case it shall be taxed to the guardian in the city or town of which he is an inhabitant. *Ibid.*, cl. 4.

A person who is taxed in a city of which he is an inhabitant as guardian of a minor cannot recover back a tax assessed on the property held by him as trustee of two others, though they were of age and themselves taxable on the property. His only remedy is by application for abatement.—*Bourne v. Boston*, 2 Gray, 494.

A minor changed his domicile by residing for two consecutive years in W. with no intention on the part of his guardian that he should return to N., his domicile of origin. *Held*, that his property was taxable in W.—*Kirkland v. Whately*, 4 Allen, 462.

Personal property held in trust by executors, administrators, or trustees, is assessed to them where the beneficiary resides, if within the state.—*Northampton v. County Commissioners*, 145 Mass. 111; *Hoadley v. County Commissioners*, 105 Mass. 528.

Fifth. Personal property held in trust by an executor, administrator or trustee, the income of which is payable to another person, shall be assessed to the executor, administrator or trustee in the city or town in which such other person resides, if within the commonwealth; and if he resides out of the commonwealth it shall be assessed in the place where the executor, administrator or trustee resides; and if there are two or more executors, administrators or trustees residing in different places, the property shall be assessed to them in equal portions in such places, and the tax thereon shall be paid out of said income. If the executor, administrator or trustee is not an inhabitant of the commonwealth, it shall be assessed to the person to whom the income is payable, in the place where he resides, if it is not legally taxed to an executor, administrator or trustee under a testamentary trust in any other state. *Ibid.*, cl. 5.

Property held in trust for the car trust, which is a partnership and is to be considered as a person to whom the income is payable, falls within the meaning of this clause.—*Ricker v. American Loan & Trust Co.*, 140 Mass. 349.

The provision of the statute in respect to the assessment of a tax to the person to whom the income is payable in the place where he resides, applies to a case where the trust was created by the will of a testator who lived and died in another state, and the will was proved and allowed there, and was never proved here.—*Hunt v. Perry*, 165 Mass. 287.

Sixth. Personal property placed in the hands of a corporation or individual as an accumulating fund for the future benefit of heirs or other persons shall be assessed to such heirs or persons, if within the commonwealth, otherwise to the person so placing it, or his executors or administrators, until a trustee is appointed to take charge of such property or of the income thereof. *Ibid.*, cl. 6.

A fund bequeathed to trustees in trust to pay the yearly income to beneficiaries, at the discretion of the trustees, and at the end of twenty years, the whole fund with the accumulations, is taxable to the heirs-at-law where they reside, if within this state.—*Hathaway v. Fish*, 13 Allen, 267.

A trustee under a will cannot maintain a bill in equity against two towns, to determine in which he is liable to be taxed.—*Macy v. Nantucket*, 121 Mass. 351; *Freetown v. Fish*, 123 Mass. 357.

An accumulating fund in the hands of a trustee, where part of the beneficiaries under the trust are residents, and part of them non-residents of this state, is taxable to the trustee in the place of his residence to the extent only of the portion in his hands belonging to beneficiaries who are non-residents; but if the trustee is taxed for the whole fund, and fails to apply for an abatement, he is liable for the entire tax.—*Davis v. Macy*, 124 Mass. 193.

An accumulating fund held in trust for the future benefit of an incorporated educational institution is exempt from taxation.—*Williston Seminary v. County Commissioners*, 147 Mass. 427.

Shares of a domestic corporation purchased by it and held for its own benefit by a trustee residing in a city in this commonwealth are not taxable either to the corporation or the trustee. Reviews the cases.—*Worcester v. Board of Appeal*, 184 Mass. 460.

Seventh. Personal property of deceased persons shall be assessed in the city or town in which the deceased last dwelt. Before the appointment of an executor or administrator it shall be assessed in general terms to the estate of the deceased, and the executor or administrator subsequently appointed shall be liable for the tax so assessed as though assessed to him. After such appointment it shall be assessed to such executor or administrator for three years or until it has been distributed and notice of such distribution has been given to the assessors stating the name and residence of the several parties interested in the estate who are inhabitants of the commonwealth and the amount paid to each. After three years from the date of such appointment it shall be assessed according to the provisions of clause five of this section. *Ibid.*, cl. 7.

A tax cannot be legally assessed against a person after his decease; but the assessment should be upon his estate in the hands of his heir, administrator, or whoever else may be in possession of the same.—*Cook v. Leland*, 5 Pick. 236.

In a case where A. S. was appointed special administrator of an estate before the probate of the will in which he was named as executor, a tax to him for the estate in his hands was upheld.—*Smith v. Northampton Bank*, 4 Cush. 1.

The personal estate of a deceased person is taxable in the town where he last dwelt and is not taxable in any other town.—*Hardy v. Yarmouth*, 6 Allen, 277.

A collector cannot maintain an action against an administrator of the estate of a deceased person for a tax assessed to the estate of the deceased after the date of the administrator's appointment.—*Wood v. Torrey*, 97 Mass. 321.

No tax can be assessed to an administrator after the estate of his intestate has been distributed among the parties interested and the assessors are notified thereof.—*Carleton v. Ashburnham*, 102 Mass. 348.

A tax assessed upon the personality of a deceased person to his executor is the debt of the latter, and the collector may bring an action against him to recover it more than two years from the time of his giving bond.—*Dallinger v. Davis*, 149 Mass. 62.

An executor who fails to give notice to the assessors of the distribution of the estate and the names of the persons interested therein as required by law, until the November following, is liable for the tax assessed to him.—*Vaughan v. Street Commissioners*, 154 Mass. 143.

In a case where the executors filed a list with the assessors after distribution of the estate, no assessment having been previously made, their petition

for an abatement of the taxes was upheld.—*Batchelder v. Cambridge*, 176 Mass. 384.

The statute requires a notice to be given in every case whether the distributees are inhabitants of the commonwealth or not. In case they are such inhabitants, the further requirement applies.—*White v. Mott*, 182 Mass. 195.

Eighth. Personal property taxable as such, held in trust by assignees under the insolvent law or under any bankrupt law or any voluntary assignment for the benefit of creditors, shall be assessed to such assignees in the place where the insolvent, bankrupt or assignor had his principal place of business, if any; otherwise in the place of his residence.

Ninth. Personal property of joint owners or tenants in common, other than partners, shall be assessed to such owners according to their respective interests, in the cities or towns in which they respectively reside. *Ibid.*, cls. 8, 9.

Property Mortgaged or Pledged.—Personal property mortgaged or pledged shall for the purpose of taxation be deemed the property of the party in possession thereof on the first day of May and money deposited with a safe deposit, loan and trust company which can be withdrawn on demand or upon not more than ten days' notice shall be deemed to be money in possession of the person to whom it is payable. C. 12, S. 26.

A bank cannot be taxed for railroad stock pledged to it as collateral security.—*Waltham Bank v. Waltham*, 10 Met. 334.

Bonds of the commonwealth and of the city of Albany held to be public stocks and taxable to the owner.—*Hall v. County Commissioners*, 10 Allen, 100.

Personalty, Information as to.—When a person who is liable to be taxed for personal property changes his domicile, the assessors of the city or town to which he has removed shall forthwith require of the assessors of the city or town in which he was last taxed a written statement of any facts which will assist in determining the value of his personal estate, and also the amount for which he was last assessed therein, which information shall be furnished by said assessors. When the assessors of a town have received notice from the assessors of another city or town of the amount for which a person, who had been an inhabitant thereof, was last taxed on personal property, a statement of such amount shall be filed in the office of the assessors requiring such information and shall be open to public inspection; and he shall not be assessed upon any less amount of personal estate than that for which he was last assessed, until he has brought in a list of his personal estate. *Ibid.*, S. 92.

Polls Assessable.—A poll-tax of two dollars shall be assessed on every male inhabitant of the commonwealth above the age of twenty years, whether a citizen of the United States or an alien. *Ibid.*, S. 1.

The polls of aliens may be ratable polls when made liable by the legislature to be rated to public taxes.—*Opinion of Justices*, 7 Mass. 523.

Exemption from payment of a poll-tax of males over seventy years of age did not carry exemption from other taxation.—*Opinion of Justices*, 5 Met. 594.

List of Persons Liable.—The assessors, assistant assessors, or one or more of them, shall annually, in May or June, visit every building in their respective cities and towns and, after diligent inquiry, shall make true lists containing, as nearly as they can ascertain, the name, age, occupation and residence, on the first day of May in the current year, and the residence on the first day of May in the preceding year, of every male person twenty years of age or upwards, residing in their respective cities and towns, liable to be assessed for a poll-tax; and shall inquire at the residences of the women voters whose names are contained in the list transmitted to them by the registrars under the provisions of section 44, whether such women voters are resident thereat, and shall thereupon make true lists of the women voters found by them.

The assessors shall, upon the personal application of an assessed person for the correction of any error in their original lists, and whenever informed of any such error, make due investigation, and, upon proof thereof, correct the same on their books. They shall cause all applications, certificates, and affidavits received by them under this section to be preserved for two years. C. 11, S. 15.

Lists Furnished to Registrars.—The assessors shall from time to time, and before the fifteenth day of July in each year, transmit to the registrars of voters the lists made as provided in the preceding section, or certified copies thereof, and shall promptly transmit to the registrars and to the collector of taxes notice of every addition to and correction in the lists made by them. Every assessor, assistant assessor, and collector of taxes shall furnish all information in his possession necessary to aid the registrars in the performance of their duties. *Ibid.*, S. 16.

The poll-tax of minors employed by a manufacturing corporation and receiving salaries cannot legally be assessed to the corporation.—*Glass Company v. Boston*, 4 Met. 181.

If a minor leaves his domicile of origin with his guardian's consent and lives for two consecutive years exclusively in another town with no definite intent on the part of the guardian to cause him to return, he acquires a new domicile in the latter place and his property should be taxed there.—*Kirkland v. Whately*, 4 Allen, 462.

A change of domicile involves both the intention to remove from one place to another and some act looking towards a change of residence with no purpose to return at a definite time.—*Harvard College v. Gore*, 5 Pick. 370; *Thorndike v. Boston*, 1 Met. 242; *Kilburn v. Bennett*, 3 Met. 201; *Mead v. Bowborough*, 11 Cush. 362; *Cabot v. Boston*, 12 Cush. 52; *Otis v. Boston*, 12 Cush. 44; *Bulkley v. Williamstown*, 3 Gray, 493; *Holmes v. Greene*, 7 Gray, 301; *Briggs v. Rochester*, 16 Gray, 337; *Whitney v. Sherborn*, 12 Allen, 111; *Cotton v. Longmeadow*, *Ibid.* 598; *Borland v. Boston*, 132 Mass. 89; *Barron v. Boston*, 187 Mass. 168.

The Statute 1864, c. 172, imposes a penalty on any one "who shall escape taxation by wilfully and designedly changing or concealing his residence, or by any act with the intent so to escape." It does not deprive any man of the liberty to reside where he pleases.—*Draper v. Hatfield*, 124 Mass. 53; *Thayer v. Boston*, *Ibid.* 132; *Lyman v. Fiske*, 17 Pick. 231.

Declarations of intention to change one's domicile are not admissible, except when the acts of which they form a part are competent.—*Wright v. Boston*, 126 Mass. 164, and cases there cited; *Weld v. Boston*, *Ibid.* 166.

An additional tax upon property discovered by the assessors to have been omitted from the last annual assessment is properly assessed to the owner of the property on the first day of May, although he has died between that day and the date of the addition, and not to his executor. The addition is not to be regarded as a new assessment.—*Noyes v. Hale*, 137 Mass. 271.

Where Assessed.—The poll-tax shall be assessed upon each person liable thereto in the city or town of which he is an inhabitant on the first day of May in each year, except in cases otherwise provided for by law. The poll-tax of minors liable to taxation shall be assessed to, and in the place of the residence of, the parents, masters, or guardians having control of the persons of such minors; but if a minor has no parent, master, or guardian within the commonwealth, he shall be personally taxed for his poll, as if he were of full age. The poll-tax of every other person under guardianship shall be assessed to his guardian in the place where the guardian is taxed for his own poll. C. 12, S. 13.

A person liable to a poll-tax, who is in a town on the first day of May, and who, when inquired of by the assessors thereof, refuses to state his legal residence, shall for the purpose of taxation be deemed an inhabitant of such place. If he designates another place as his legal residence, said assessors shall notify the assessors of such other place, who shall thereupon tax him as an inhabitant thereof; but he shall not be exempt from the payment of a tax legally assessed upon him in his legal domicile. *Ibid.*, S. 14.

Property, Real and Personal.—All property real and personal situated within the commonwealth, and all personal property of the inhabitants of the commonwealth wherever situated, unless expressly exempted by law, shall be subject to taxation. C. 12, S. 2.

A railroad corporation, whose right of way was exempt from taxation, was held not taxable on buildings and structures erected upon it.—*Worcester v. Western R. R. Corpn.*, 4 Met. 564.

Property of deceased persons, in process of administration and in the hands of executors and administrators, is not exempt from taxation.—*Smith v. Northampton Bank*, 4 Cush. 12.

Land purchased or taken by a city for the purpose of obtaining a water supply, and used for that only, is not liable to taxation.—*Wayland v. County Commissioners*, 4 Gray, 500.

The fact that an owner of personal property liable to taxation is a citizen and an inhabitant of another state, where he is liable for taxes on his personal property, does not exempt him from taxation here.—*Leonard v. New Bedford*, 16 Gray, 293.

The personal estate of an unmarried woman is liable to taxation in this commonwealth, although by the constitution she is not allowed to vote for the officers by whom the tax is assessed.—*Wheeler v. Wall*, 6 Allen, 559.

Intoxicating liquors, not kept for illegal sale, are subject to taxation.—*Dunbar v. Boston*, 101 Mass. 317.

Land damages do not constitute a debt liable to be included in the landholder's ratable estate until they have become fixed and receivable.—*Lowell v. Street Commissioners*, 106 Mass. 543.

Real Estate of Deceased Person.—The undivided real estate of a deceased person may be assessed to his heirs or devisees, without designating any of them by name, until they have given notice to the assess-

ors of the division of the estate and of the names of the several heirs or devisees; and each heir or devisee shall be liable for the whole of such tax, and when paid by him he may recover of the other heirs or devisees their respective proportions thereof.

The real estate of a person deceased, the right or title to which is doubtful or unascertained by reason of litigation concerning the will of the deceased or the validity thereof, may be assessed in general terms to his estate, and said tax shall constitute a lien upon the land so assessed and may be enforced by sale of the same or a part thereof, as provided for enforcing other liens for taxes on real estate. *Ibid.*, SS. 21, 22.

A tax assessed to a deceased person is illegal and void.—*Sawyer v. Mackie*, 149 Mass. 270.

When a will devising real estate was duly probated and allowed, it appeared of record that the real estate had become vested in devisees, and the taxes thereon could not be properly assessed to the heirs of the testator.—*Tobin v. Gillespie*, 152 Mass. 221.

Real estate, in general.—Real estate for the purpose of taxation shall include not only all land within the commonwealth but also all buildings and other things erected on or affixed to the same. *Ibid.*, S. 3.

Water power for mill purposes not used is not a distinct subject of taxation. It had been annexed to the mills, went to enhance their value, and could only be taxed with them, and in W. where the mills were situated.—*Boston Manufacturing Co. v. Newton*, 22 Pick. 22.

Entry of a building held to be tortious where a sale for taxes had been wrongfully made under an assessment of the building as the real estate of a nonresident and sale by the collector as personal property.—*Flanders v. Cross*, 10 Cush. 514.

A building held exempt from taxation standing on exempted land and not described by the assessors as required by law.—*Mass. General Hospital v. Somerville*, 101 Mass. 328.

Land covered by water in a reservoir should be valued for taxation separately from the water power.—*Pingree v. County Commissioners*, 102 Mass. 76.

Statute of 1872, c. 306, as to the mode of assessment of reservoirs and lands under the same, held unconstitutional and void.—*Cheshire v. County Commissioners*, 118 Mass. 386.

A right to flow land is an easement and not an estate liable to taxation independently.—*Fall River v. County Commissioners*, 125 Mass. 567.

A building resting on timbers upon the top of the ground was held taxable as real estate, although by the terms of a lease under which it was held it was removable by the lessee after full payment of rent and taxes at the expiration of the lease.—*Milligan v. Drury*, 130 Mass. 428.

A dam and sluice-way are "things erected on or affixed to the land," and subject to taxation.—*Flax Pond Water Co. v. Lynn*, 147 Mass. 33.

County property is exempt from taxation only when actually appropriated to public uses. Real estate belonging to a county let for private purposes and a source of income to the county is liable to taxation by the city within which it is situated.—*Essex County v. Salem*, 153 Mass. 141.

Divided after Assessment.—If real estate is divided by sale, mortgage, upon a petition for partition or otherwise after a tax has been assessed thereon and such division has been duly recorded in the registry of deeds, the assessors at any time before said real estate has been sold

for payment of taxes, upon the written request of the owner or mortgagee of any portion thereof, shall apportion said tax and the costs and interest accrued thereon upon the several parcels thereof, in proportion to the value of each. C. 12, S. 88.

Assessors shall send notice of the request for such apportionment and of the time appointed therefor, by mail, to every person interested in said real estate whose address is known to them. *Ibid.*, S. 89.

Real Estate; Mortgages.—Taxes on real estate shall be assessed, in the city or town in which the estate lies, to the person who is either the owner or in possession thereof on the first day of May, and the person appearing of record as owner on the first day of May, even though deceased, shall be held to be the true owner thereof. Except as provided in the three following sections, mortgagors of real estate shall for the purpose of taxation be deemed the owners until the mortgagee takes possession, after which the mortgagee shall be deemed the owner. *Ibid.*, S. 15.

The real estate of a bank, including its banking-house, is taxable in the town where such estate lies.—*Fremont Bank v. Boston*, 1 Cush. 142.

A misnomer in an assessment sought to be corrected by erasure and insertion of another name, and other irregularities, rendered a tax sale void, as against a tenant long in possession of the land sold.—*Sargeant v. Bean*, 7 Gray, 125.

Error in the assessment of personal estate with real estate and machinery of a manufacturing corporation.—*Dunnell Manfg. Co. v. Pawtucket*, 7 Gray, 277.

A city is not estopped to deny the validity of the acts of its assessors and collector, who are public officers and not its private agents. The statutes relating to the levy and collection of taxes do not apply to city property.—*Rossire v. Boston*, 4 Allen, 57.

Land is taxable to the person having the legal estate therein, although he is a mere trustee without power of control or management.—*Miner v. Pingree*, 110 Mass. 47.

If the assessors know who is in possession of real estate they cannot legally assess it to "an owner unknown;" nor if they know or have means of knowing in whom the record title is.—*Oakham v. Hall*, 112 Mass. 535.

A lessee having covenanted to pay all taxes on leased premises could not recover back from the lessor a proportionate part of a year's taxes paid, although the lease was terminated by the destruction of the premises by fire before the end of the year.—*Wood v. Bogle*, 115 Mass. 32.

No title passes by a collector's deed where the tax was wrongfully assessed to a former owner of the land.—*Desmond v. Babbitt*, 117 Mass. 233.

A reassessment held invalid because made to original owners after their title had been extinguished by foreclosure sale.—*Davis v. Boston*, 129 Mass. 378.

The owner of land dying left a widow and an heir-at-law. Dower was not assigned to the widow, who, acting as agent of the heir-at-law, let the land to a tenant. While the tenant was in sole possession a tax was assessed on the land to the widow. Held, that the widow was not in possession and the assessment was invalid.—*Lynde v. Brown*, 143 Mass. 337.

Owners of real estate, including trustees holding the legal title, properly taxed for it are personally liable for the tax, and are not discharged by a subsequent taking thereof under the right of eminent domain. The only remedy against a tax, when part of it is legal, is by application for an abatement.—*Richardson v. Boston*, 148 Mass. 508.

If a husband and wife with their children live together on the wife's real estate the presumption is that the husband is in possession as the head of the

family and as her licensee. The taxes are properly assessed to him.—*Southworth v. Edmonds*, 152 Mass. 203.

A life tenant may be taxed as the owner of land.—*Bates v. Sharon*, 175 Mass. 293.

Value of Equity to Mortgagor.—If any person has an interest in real estate, not exempt from taxation under section 5, as holder of a duly recorded mortgage given to secure the payment of a fixed and certain sum of money, the amount of his interest as mortgagee shall be assessed as real estate in the place where the land lies; and the mortgagor shall be assessed only for the value of such real estate after deducting the assessed value of the interest therein of such mortgagee. If such estate is situated in two or more places, the amount of the mortgagee's interest to be assessed in each place shall be proportioned to the assessed value of the mortgaged real estate in the respective places, deducting therefrom the taxable amount of prior mortgages, if any, thereon. *Ibid.*, S. 16.

In determining the basis upon which to levy the annual excise on the franchise of an insurance corporation, the tax commissioner should deduct from the aggregate value of the shares of the corporation the value of the mortgages of real estate held by it and subject to local taxation.—*Firemen's Fire Ins. Co. v. Commonwealth*, 137 Mass. 80.

Bonds of a corporation secured by a mortgage of its land executed to and held by a trustee for the bondholders are not taxable as personal property to the individual owners. The trustee pays the tax assessed upon the whole value of the land equal to the amount of the bonds outstanding.—*Knight v. Boston*, 159 Mass. 551.

Mortgage Recitals, if Conclusive.—If the holder of such mortgage fails to file in the assessors' office a statement under oath of all his estate liable to taxation under the preceding section, including a statement of the full amount remaining unpaid upon such mortgage and of his interest therein, the amount stated in the mortgage shall be conclusive as to the extent of such interest; but his interest in such real estate shall not be assessed at a greater sum than the fair cash valuation of the land and the structures thereon or affixed thereto; and the amount of a mortgage interest in an estate which has been divided after the creation of such mortgage need not be apportioned upon the several parts of such estate, except as provided in sections 88 to 90 inclusive. *Ibid.*, S. 17.

Mortgagors and Mortgagees Joint Owners.—Mortgagors and mortgagees referred to in the two preceding sections shall for the purpose of taxation be deemed joint owners until the mortgagee takes possession; and until such possession is taken by a first mortgagee, an assessor or the collector of taxes, upon application, shall give to any such mortgagee or mortgagor a tax-bill showing the whole tax on the mortgaged estate, and the amount included in the valuation thereof as the interest of each mortgagee and of the mortgagor respectively. If the first mortgagee is in possession, he shall be deemed sole owner; and any other mortgagee in possession shall be deemed joint owner with prior mortgagees. *Ibid.*, S. 18.

Reassessment.— Every tax except a poll-tax, which is invalid by reason of any error or irregularity in the assessment and which has not been paid, or which has been recovered back, may be re-assessed by the assessors for the time being, to the just amount to which, and upon the estate or to the person to whom, it ought at first to have been assessed, whether such person has continued an inhabitant of the same city or town or not. An alienation of the real estate assessed shall not, subject to the provisions relative to a lien contained in section 35 of chapter 13, defeat a re-assessment, if made within two years after the tax first assessed was committed to the collector. C. 12, SS. 86, 87; C. 13, S. 72.

In correction of an error in the assessment of a joint tax on two parcels of land of different owners, the re-assessment should fix the value of the land belonging to each and the amount taxable to each separately. Such re-assessment should be formally made and entered upon the assessors' list and thus recommitted to the collector.— *Jennings v. Collins*, 99 Mass. 32.

When the original assessment of a tax is valid, its re-assessment is void.— *Oakham v. Hall*, 112 Mass. 535.

Where, on the assessors' tax-book the original entry was made to three persons together, and on the same book a later entry of a vote of the assessors for re-assessment and separate entries were made of the amount of property and of tax to each, it was held that a re-assessment was made.— *Hunt v. Perry*, 165 Mass. 292.

Special conditions under which re-assessments were made.— *Hubbard v. Garfield*, 102 Mass. 72; *Davis v. Boston*, 129 Mass. 377.

Responsibility, Limit.— Assessors shall not be responsible for the assessment of a tax assessed by them in pursuance of a vote for that purpose, certified to them by the clerk or other proper officer of a city, town, or fire district, except for the want of integrity and fidelity on their own part. C. 12, S. 98.

Where the assessors of a religious society assess a tax on a person who is not a member, they are liable to an action of trespass.— *Gage v. Currier*, 4 Pick. 399; *Inglee v. Bosworth*, 5 Pick. 498.

The assessors of a town are not responsible to an inhabitant for any unintentional error committed by them in the assessment of a tax. The injured party has his remedy against the town.— *Ingraham v. Doggett*, 5 Pick. 451.

An action does not lie against assessors by one who is liable to taxation for an omission to tax him, whereby he loses his right to vote at an election, unless it appears that the act was done maliciously and purposely.— *Griffin v. Rising*, 11 Met. 339.

Assessors are liable for assessing and issuing a warrant for the collection of a school tax, if the school district was not legally established. The burden is on them to show that the district was legally established.— *Dickinson v. Billings*, 4 Gray. 42.

The legal existence of a school district having been shown, and the tax having been duly voted and certified to the assessors by the clerk, it was held that an action of tort could not be maintained against them for issuing a warrant for collection of the tax.— *Howard v. Stevens*, 3 Allen, 410; *Judd v. Thompson*, 125 Mass. 553.

Adding an unpaid highway tax to an assessment after the next year, when it should have been added, renders the assessors liable to a person whose property was taken by the collector on a warrant for its collection.— *Eames v. Johnson*, 4 Allen, 382.

They are not liable for assessing erroneously a tax on a person not an inhabitant of the town.— *Durant v. Eaton*, 98 Mass. 469; *Baker v. Allen*, 21 Pick. 382; *Alger v. Easton*, 119 Mass. 77.

Sewer Assessments, Apportionment.— In towns which accept the provisions of this section or have accepted corresponding provisions of earlier laws, owners of land upon which assessments for sewers have been made may have an apportionment of such assessments under conditions prescribed in the statute. C. 49, SS. 14, 15.

The assessors are required to divide such assessments in cases where lands are affected upon which there are mortgages upon request in writing of the owner in fee of such land in the manner and with the effect specified in the statute. *Ibid.*, SS. 16-19.

Street Railways, Excise Tax.— On or before the first day of November, annually, the assessors of every city and town in which a street railway is operated, including a company whose lines are located partly within and partly without the limits of the commonwealth, whether chartered or organized under the laws of this commonwealth or elsewhere, shall assess on each company described in the preceding section operating a railway therein an excise tax of an amount equal to such proportion of the percentages specified in the statute of the gross receipts of such company as the length of tracks operated by it in public ways of such town bears to the total length of tracks operated by it in public ways.

The excise tax provided by this section shall be in addition to the taxes now provided by law.

Prior to the fifteenth day of November in each year the assessors of every city and town shall notify the collector of taxes thereof of the amount of excise tax assessed therein under the provisions of section 44. C. 14, SS. 44, 46.

The assessors in computing the annual gross receipts of a street railway company must include all tracks operated by the company on private lands outside the limits of a public highway, as well as those on public ways.— *Greenfield, etc., St. Railway v. Greenfield*, 187 Mass. 352.

Returns by.— A street railway company, including a company whose lines are located partly within and partly without the limits of the commonwealth, whether chartered or organized under the laws of this commonwealth or elsewhere, shall annually, on or before the fifteenth day of October, make and file in the office of the board of assessors of every town in which any part of the railway operated by it is situated a return signed and sworn to by its president and treasurer stating the length of track operated by it in public ways in such town and also the total length of track operated by it in public ways, determined as provided in section 37, and also the amount of its gross receipts during the year ending on the preceding thirtieth day of September, including therein all amounts received by it from the operation of its railway, but excluding income derived from sale of power, rental of tracks or other sources. C. 14, S. 43.

State, County and Town Taxes.—The assessors shall assess, according to the provisions of this chapter, state taxes for which they receive such warrants, county taxes duly certified to them, city or town taxes voted by their respective cities or towns, and all taxes duly voted and certified by fire and other districts therein. C. 12, S. 35.

The inhabitant of a school district on the first of May, but removing before a vote was passed by the district to raise money to erect or repair a school-house, was held not liable for a tax under such vote.—*Savary v. School District*, 12 Met. 178.

The entry of the name and amount of a poll-tax on the assessors' books without their knowledge or consent does not constitute a legal assessment, and the town is not estopped to deny the same.—*Plymouth v. Wareham*, 126 Mass. 475.

State Treasurer's Warrants.—When a state tax is to be assessed, the treasurer and receiver general shall send his warrants for the assessment thereof by mail to the assessors of the several cities and towns. *Ibid.*, S. 34.

Valuation for Assessment.—The assessors of each town shall at the time appointed therefor make a fair cash valuation of all the estate, real and personal, subject to taxation therein. *Ibid.*, S. 51.

The just proportion intended by existing statutes is attained by assessing property of different persons at a uniform rate upon its fair cash valuation.—*Lowell v. County Commissioners*, 152 Mass. 375.

In valuing the real property of a manufacturing corporation for taxation it is erroneous to value the land as if the buildings were removed from it and then to value the buildings as if they were to remain upon it, if the sum of the values thus obtained is greater than the fair cash value of both taken together.—*Fremont & S. Mills v. Lowell*, 163 Mass. 283.

State, County and Town Taxes in Same Assessment.—The assessors may include state, county, and town taxes, or any two of them, in the same assessment: *Ibid.*, S. 52.

Trust Property; Separate Assessment of.—Upon request in writing made within the time specified for the bringing in of lists, under the provisions of section 41 and stating the names, domiciles, and proportionate shares of wards, *cestuis que trustent*, heirs, or other persons, the assessors shall make separate assessments so as to distinguish how much of the personal property held for such persons is assessed in respect to each. C. 12, S. 24.

An accumulating fund in the hands of a trustee, where part of the beneficiaries under the trust are residents and part of them non-residents of this state, is taxable to the trustee in the place of his residence, to the extent of the portion in his hands belonging to the non-residents.—*Davis v. Macy*, 124 Mass. 193; *Northampton v. County Commissioners*, 145 Mass. 111; *Hunt v. Perry*, 165 Mass. 292.

Valuation-Books, Copies to Secretary of Commonwealth.—The assessors of towns, shall, on or before the first day of October in the year nineteen hundred and four and in every third year thereafter, deposit in the office of the secretary of the commonwealth, in books to be by him

provided for the purpose, a copy of the assessor's valuation-books of those years, to be by them certified under oath. Said assessors shall also, annually, on or before the first day of October, in like manner deposit an attested copy of the table of aggregates required by the provisions of section 60. C. 12, S. 61.

Valuations Every Ten Years.—There shall be a valuation of estates, taken anew once in every ten years at least, and as much oftener as the general court shall order. State Cons., Pt. II, S. 1, Art. IV.

Lists, Oath to.—The assessors, or other persons authorized to assess the taxes in a city or town, shall, at the end of said valuation list, subscribe and take the oath given in the statute. C. 12, S. 65.

List, in Books, in Office.—The assessors shall make, upon the books furnished under the provisions of section 58, a list of the valuation and the assessment thereon. *Ibid.*, S. 56.

Where the assessors' lists of valuations did not exhibit in distinct columns the "true value of real estate" and the "reduced value" as required by statute, but contained a column of the "value," it was *held* that the irregularity did not render the valuation and assessment void.—*Torrey v. Millbury*, 21 Pick. 64.

"Defects in the warrant or tax-list might be a good excuse for not executing the warrant. But to say that a collector who has collected the money without objection by the tax-payers is not liable to account therefor would be as contrary to law as to justice." SHAW, C. J., in *Sandwich v. Fish*, 2 Gray, 298.

A valuation list *held* good, although it contained no specification of particulars under the several classes of property, but only a general estimate of the value of each class, where the tax-payer did not furnish to the assessors a list of his property.—*Tobey v. Wareham*, 2 Allen, 594.

The requirement to deposit a copy of the list of valuation and assessment with their chairman appears to be directory merely, as to the person with whom it is to be left.—*Westhampton v. Searle*, 127 Mass. 505.

Warrant to the Collector.—The assessors shall, within a reasonable time, commit the tax-list, with their warrant, to the collector of taxes; or, if no collector has been chosen, to a constable, or, if there is no constable, to the sheriff or his deputy for collection; but the assessors of a town shall not commit a tax-list to the collector until the bonds of such collector and of the town treasurer have been given and approved as required by law. *Ibid.*, S. 67.

Under Rev. Stats., c. 15, §§ 33, 78, it was *held* that a constable duly chosen and sworn was qualified to act as collector of taxes without any further oath, another person duly chosen collector not having accepted the office.—*Hays v. Drake*, 6 Gray, 387.

The two years at the expiration of which the lien is lost begin to run when the tax is first committed to the collector.—*Russell v. Deshon*, 124 Mass. 342.

A person irregularly appointed collector of taxes was not *de jure* an officer of the town, and could not collect compensation for services rendered.—*Phelon v. Granville*, 140 Mass. 389.

Watch Districts, how Assessed.—The clerk shall certify to the assessors of the town all sums of money voted to be raised, which shall

be assessed and collected by the officers of the town in the same manner as town taxes are assessed and collected and shall be paid over to the treasurer, who shall hold them subject to the order of the prudential committee. The assessors, treasurer, and collector of a town in which such district is organized shall have the powers and perform the duties, with reference to the assessment, collection, and abatement of said taxes, which they have and perform in the assessment, collection, and abatement of town taxes; but the sums so voted shall be assessed upon the property, real and personal, located within such district. C. 31, S. 16.

Stocks owned within a fire district were properly assessed. They have no locality except where the owner lives and has his domicile.—*Dwight v. Fire District*, 11 Met. 374.

AUCTIONEERS.

See "Selectmen."

Auditor.—One or more auditors are chosen annually at the annual town meeting by ballot, and are not allowed to hold any other town office. An auditor is required to take an official oath before entering upon the performance of his duties. C. 11, SS. 334, 343, 347.

Duties.—They are required to examine the books and accounts of all town officers and committees who are entrusted with the receipt, custody, or expenditure of money, and all original bills and vouchers on which money has been paid or may be paid from the town treasury. They have free access to such books, accounts, bills, and vouchers, as often as once a month, for the purpose of examination, and shall examine the same at least once in each year, and annually report in writing the results of their examination. C. 25, S. 79; C. 13, S. 6.

Vacancy.—If the office of an auditor is vacant, the remaining auditors, if any, may perform the duties thereof and may appoint a person to aid them. If there is no remaining auditor, the selectmen shall appoint one to serve until another is chosen and qualified. C. 11, S. 360.

CAUCUSES AND PRIMARIES.

No body of voters is recognized by law in Massachusetts as a political party which did not poll at least three per cent of the entire vote cast at a preceding annual election for governor. The term "municipal party" applies to a party other than a political party which at the preceding city or town election polled for mayor or a selectman at least three per cent of the entire vote cast in the city or town for that office and is used only with reference to caucuses for the nomination of city or town officers.

Joint Caucuses or Primaries.—By a recent act of the legislature (C. 454, Acts of 1903), as amended by C. 386, Acts of 1905, the methods prescribed in the general law governing the nomination of candidates

by party caucuses have undergone some radical changes. Lack of space forbids the giving in detail of all the provisions of the act, but the substance of it may be stated.

Under the general law the door is left open for the commission of certain frauds which the new enactment seeks to prevent. The new act requires a person who seeks to vote at a primary to declare as he offers to vote which party ballot he desires, and as he receives the ballot his selection is checked on the voting-list used by the ballot-clerk, and such list is returned to the town clerk of the town for preservation during the succeeding year. A copy of the party entries on such list is used at subsequent primaries for determining with what party the voter has been enrolled. The voter may change his enrollment by appearing in person before the town clerk and requesting in writing to have his enrollment changed to another party; but such change does not take effect until the expiration of ninety days thereafter.

No person having voted in the caucus of one political party is entitled to vote or take part in the caucus of another within the ensuing twelve months, but no voter can be prevented from voting or taking part in any caucus, if he takes an oath before the presiding officer that he is a registered voter in the town and has the legal right to vote in the caucus; that he is a member of the political party holding the same; and intends to vote for its candidates at the election next ensuing; and that he has not taken part or voted in the caucus of any political party for twelve months last past.

Times of Holding.— All caucuses of political parties except for special elections and for choice of delegates to political conventions which nominate candidates for the annual state election, and candidates to be voted for at such election, are held throughout the commonwealth on a day designated by the state committee of the party.

Paraphernalia.— The ballot, ballot-boxes, voting-list, seals, and record-books and other apparatus for each political and municipal party are provided and treated in accordance with the provisions of the general election law, except that the number of ballots is determined by the town clerk, and the ballots for each party are printed on paper of a different color from that on which those for any other party are printed.

Officers.— The provisions of the election law relating to election officers, voting-places for elections, election apparatus, and blanks, calling and conduct of elections, manner of voting, counting and recounting of votes, corrupt practices and penalties, apply to the primaries provided for by the new law.

Any town may adopt the provisions of the act by a vote at any annual meeting upon a petition of five per cent of the voters registered at the time of the preceding annual meeting, filed on or before the last day for filing nomination papers. Acts of 1903, C. 454; Acts of 1905, C. 386.

CITIZENS.

See "Voters."

CLERK.

See "Town Clerk."

COLLECTOR OF TAXES.

Election.—The collector of taxes is chosen by ballot annually at the annual meeting of the town to serve one year. A town may vote to choose more than one such officer.

If there is a failure at an election to choose a collector, or if the person chosen shall not accept such office, or if a vacancy shall occur, the town may at any legal meeting elect a person to the office. C. 11, SS. 334, 355.

Exemption from Service.—No person shall be required to serve two terms successively in the same office; and no person shall be required to accept the office of constable who has been a constable or collector of taxes in the town within the preceding seven years. *Ibid.*, S. 348.

Vacancy, how Filled.—If the office of collector of taxes is vacant, or if the collector is unable to perform his duties, the selectmen may in writing appoint a collector *pro tempore*, who shall be sworn, give bond in like manner as the collector chosen by the town, and hold such office until another is chosen by the town and qualified, or the disability is removed. *Ibid.*, S. 359.

The town treasurer may at any town meeting be appointed collector of taxes. *Ibid.*, S. 334.

Bond.—The collector of taxes shall give bond to the town for the faithful performance of his duties, in a sum and with sureties approved by the selectmen. C. 25, S. 77.

The tax-list shall not be committed to the collector until the bonds of such collector and of the town treasurer have been given and approved as required by law. *Ibid.*, S. 67.

Deputies give bond in such sum as the selectmen may prescribe. C. 13, S. 80.

If the collector does not, within ten days after his election or appointment, give bond, the selectmen may declare the office vacant and appoint another in his place. C. 11, S. 359.

A collector is liable for a breach of his bond in not paying over money collected by him, although the same is stolen from him without his fault.—*Hancock v. Hazzard*, 12 Cush. 112.

A constable duly chosen and sworn is qualified to act as collector of taxes without any further oath, if another person duly chosen collector does not accept the office.—*Hays v. Drake*, 6 Gray, 387.

A town may vest in officers lawfully chosen at a town meeting any special authority which is authorized by law necessary for the exercise of their official duties.—*Sherman v. Torrey*, 99 Mass. 472.

A sale of land for non-payment of taxes is void after two years from the time when they were first committed to the collector.—*Russell v. Deshon*, 124 Mass. 342.

A person not elected nor appointed collector according to law, notwithstanding he is sworn and gives bond and a warrant was issued to him by the assessors, cannot recover from the town for services rendered as collector *de facto*.—*Phelon v. Granville*, 140 Mass. 386.

The sureties on the bond of a collector of taxes are liable for sums received during the portion of his term before the bond was given. The authorities and cases fully discussed.—*Hudson v. Miles*, 185 Mass. 582.

List of Deceased Collector.—If a collector dies or is removed from office or if the term of office of a collector who is paid by a fixed salary expires before the collection of the taxes committed to him is completed, the assessors shall commit to his successor the list of taxes uncollected with their warrant. C. 13, S. 85.

Declarations of a deceased collector to third persons are not admissible in evidence in a suit brought by a person whose land has been sold for taxes against an assessor for the taking and sale of the land.—*Lawrence v. Kimball*, 1 Met. 524.

Abatement, Claimant.—If a person claims the benefit of an abatement, he shall exhibit to the collector demanding his taxes the certificate of such abatement authorized by the provisions of section 83 of chapter 12; and he shall be liable to pay all costs and officers' fees incurred before exhibiting such certificate. *Ibid.*, S. 17.

Uncollectible Taxes.—If a collector is satisfied that a poll-tax or tax upon personal property, or any portion of said tax, committed to him or to any of his predecessors in office for collection, cannot be collected by reason of the death, absence, poverty, insolvency, bankruptcy, or other inability of the person assessed to pay, he shall notify the assessors thereof in writing, under oath, stating the reason why such tax cannot be collected. C. 12, S. 84.

Accounts Exhibited.—The selectmen may require the collector once in two months to exhibit to them a true account of all money received on the taxes committed to him, and to produce the treasurer's receipts for all money paid into the treasury by him. C. 13, S. 82.

Aid, when Required.—A collector who is resisted or impeded in the exercise of the duties of his office may require any suitable person to aid him; and any such person refusing or neglecting to render such aid shall forfeit not more than ten dollars. *Ibid.*, S. 30.

Apportionment Certified, Separate Payments.—In case the assessors give a tax-payer a certificate stating what portion of his tax is assessed as state, county, and town tax, respectively, the collector shall receive and receipt for either of such taxes separately, or for all together, as the tax-payer may desire; but the state tax assessed upon poll and property and the county tax so assessed shall each constitute an entire and indivisible tax. C. 12, S. 97.

Arrest for Non-Payment.— If a person refuses or neglects to pay his tax for fourteen days after demand and the collector cannot find sufficient goods upon which it may be levied, he may arrest the person and commit him to jail until he pays the tax and charges of commitment and imprisonment or is discharged according to law. C. 13, S. 26.

The collector is required to give to the keeper of the jail a certificate stating that he has committed the person for non-payment of his tax for want of property whereof to make distress and specifying the amount of the tax, interest, charges, and fees. If such arrest and commitment be made more than one year after the tax was committed to the collector, he shall be liable for the tax and the charges of the person who is discharged, unless he shall be exonerated therefrom by the town to which the tax is due. *Ibid.*, SS. 27, 29.

A non-resident owner of real estate may be arrested for non-payment of taxes thereon after due demand on him and failure of the officer upon diligent search to find any goods belonging to him or on the estate.—*Snow v. Clark*, 9 Gray, 190.

A collector has no right to take the body for non-payment of taxes, if sufficient property is shown him upon which to levy; although fourteen days have elapsed since a demand of payment.—*Lothrop v. Ide*, 13 Gray, 93.

The statute does not render the collector liable to pay for the support of the person so committed while in jail.—*Townsend v. Walcutt*, 3 Met. 152.

A person arrested for non-payment of taxes has a right to require that the provisions of the statute shall have been followed strictly.—*Hunt v. Holston*, 185 Mass. 137.

Books and Accounts.— He is required to keep in the book containing the tax-list committed to him by the assessors, against the name of every person assessed for a tax, entries showing the disposition thereof, whether re-assessed, abated, or paid and the date of such disposition.

He shall also keep a cash-book with entries showing all sums of money paid to him on different accounts, the total amount received and the date of the receipt, and also showing the date and amount of every payment and disbursement made by him, and to whom paid, with such other matters as the town may require.

All books kept by the collector are furnished by and are the property of the town, and shall be at all reasonable times open to examination by the auditor or any other agent of the town duly authorized for that purpose. The collector is required, upon demand by the selectmen, to exhibit to them or to any persons whom they may designate, at any time during ordinary business hours, the books, accounts, and vouchers relating to taxes committed to him and to his receipts and payments on account thereof; and the selectmen or such other persons designated by them shall have full opportunity to examine such books, accounts, and vouchers, and to make copies and extracts therefrom. *Ibid.*, SS. 4-6.

Every collector is required within three months after his retirement from the office to deposit all his accounts, records, and papers except his warrant, relating to the assessment and collection of taxes, with

the clerk of the town; and when all taxes which have been committed to him have been collected, or in any event at the end of three years from the date of their commitment to him, he shall so deposit all such accounts, records, and papers, together with his warrant. *Ibid.*, S. 7.

Constables as Collectors.— Constables duly elected by any town may also be collectors of taxes, unless other persons are especially chosen or appointed as such. C. 11, SS. 334, 343; C. 25, S. 76.

Credits to Collectors.— The collector shall be credited with all sums abated; with the amount of taxes assessed upon any person committed to jail for non-payment of his tax within one year from the receipt of the tax-list by the collector, and who has not paid his tax; with any sums which the city or town may see fit to abate to him, due from persons committed after the expiration of a year; with all sums withheld by the treasurer of a city or town under section 81; and with the amount of the taxes and charges where land has been purchased or taken by the city or town for non-payment of taxes. C. 13, S. 83.

When a collector is removed from office he and his sureties are liable on his official bond for such part of the taxes committed to him as are lost by reason of his remissness, although the uncollected taxes have been committed to his successor, who has given bond for the faithful performance of the duties of the office.— *Colerain v. Bell*, 9 Met. 503.

Payments made by a collector in behalf of the town and allowed to him in his account cannot be again allowed him in an action on his official bond, nor can payments on negotiable orders drawn on him by the selectmen be credited to the defendants. A collector is not responsible to the town for not collecting taxes under a warrant illegal on its face.— *Cheshire v. Howland*, 13 Gray, 321.

Corporate Shares, Seizure and Sale.— The seizure of a share of stock or other interest in a corporation may be made by leaving with its clerk, treasurer, or cashier, if there is such officer, otherwise with any officer or person who has at the time the custody of its books and papers, an attested copy of the warrant, with a certificate thereon, under the hand of the collector, stating the tax which the stockholder is liable to pay, and that because of his refusal or neglect to pay, the collector has seized such share or interest. The sale thereof shall be made in the manner above prescribed for the sale of goods by collectors, and shall also be subject to the provisions of sections 49 and 50 of chapter 177. *Ibid.*, S. 23.

Bank shares belonging to the estate of a decedent were lawfully seized in the hands of the executor and sold by the collector for taxes rightfully assessed upon them.— *Smith v. Bank*, 4 Cush. 10.

Demand for Tax.— The collector shall, before selling the land of a resident, or distraining the goods of any person, or arresting him for his tax, serve on him a statement of the amount thereof with a demand for its payment. If the heirs of a deceased person, copartners, or two or more persons are jointly assessed, service need be made on only one of them. Such demand for the tax upon land may be made upon the

person occupying the same upon the first day of May of the year in which the tax is assessed. If a mortgagee has given notice under the provisions of section 36, such demand shall be served upon the mortgagee instead of the owner or occupant. No demand need be made on a non-resident owner of land, nor, except as herein provided, on a mortgagee. He may before making such demand serve a summons upon the person from whom the tax is due. *Ibid.*, SS. 14, 15.

A demand for payment within fourteen days must be made upon a resident owner before his land can be sold for taxes. Section 33 of the same chapter, in regard to non-resident owners, does not require such a demand.—*Downey v. Lancy*, 178 Mass. 465.

Discounts on taxes prepaid.—The collector shall make such discount on tax-bills paid by persons voluntarily as the town may allow. C. 12, S. 71.

Distress for Taxes.—If a person refuses or neglects to pay his tax for fourteen days after demand, the collector shall without unnecessary delay levy the same by distress or seizure and sale of his goods, including any share or interest he may have as a stockholder in a corporation incorporated under authority of this commonwealth or under the laws of the United States and located or having a general office in this commonwealth; but excluding the tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved land, military arms, utensils for housekeeping necessary for upholding life, and bedding and apparel necessary for himself and family.

The collector shall keep the goods distrained, at the expense of the owner, for four days at least, and shall, within seven days after the seizure, sell the same by public auction for payment of the tax and charges of keeping and sale, first posting notice of the sale in some public place in the city or town at least forty-eight hours prior thereto.

The collector may once adjourn such sale for not more than three days, and he shall forthwith post a notice of such adjournment at the place of sale. C. 13, SS. 20–22.

A demand at the last usual place of abode of a non-resident is sufficient to justify a subsequent seizure and sale of his goods for non-payment of taxes.—*King v. Whitcomb*, 1 Met. 328.

A distress for non-payment of a tax cannot be made after the death of the person on whom the tax is assessed.—*Wilson v. Shearer*, 9 Met. 504.

A warrant does not authorize a collector to collect a tax by distress unless accompanied by a tax-list.—*Barnard v. Graves*, 13 Met. 85.

A form of notice of sale of personal property held sufficient in an action against the collector for conversion of the property.—*Rawson v. Spencer*, 113 Mass. 40.

A collector of taxes is liable *in tort*, if he knowingly sells more of the property distrained by him than is necessary to satisfy the tax and charges.—*Cone v. Forest*, 126 Mass. 97.

Erroneous Name in Tax-Bill.—If, in the assessors' lists or in their warrant and list committed to the collector, there is an error in the

name of a person taxed, the tax assessed to him may be collected of the person intended to be assessed, if he is taxable and can be identified by the assessors. C. 13, S. 18.

The rule applies to the case of a person whose surname only is inserted in the lists.—*Tyler v. Hardwick*, 6 Met. 470.

Other cases of misnomer: *Trustees v. Boston*, 12 Cush. 56; *Westhampton v. Searle*, 127 Mass. 502.

In a case in which a tenant of land claimed that it should be assessed to him, it was held that the rule as to misnomer did not apply, and the purchaser at the tax sale took no title.—*Sargent v. Bean*, 7 Gray, 125.

A collector cannot maintain an action against the administrator of the estate of one deceased for a tax on personal property assessed to the estate of the deceased after the date of the administrator's appointment.—*Wood v. Torrey*, 97 Mass. 321.

Fire District, Powers in.—The collector has the same powers and performs the same duties with reference to the money voted by a fire district as he has and exercises in regard to town taxes. C. 32, S. 63.

Mortgagee, Collection from.—If the holder of a mortgage takes possession of land thereunder, all taxes due and constituting a lien thereon, and the expenses of any taking or sale which has been commenced or has taken place, may be recovered of him in an action of contract by the collector, or by the purchaser, as the case may be. C. 13, S. 63.

Statute construed.—*Swan v. Emerson*, 129 Mass. 291; *Bank v. Boston*, 131 Mass. 273; *Walsh v. Wilson*, 130 Mass. 126.

An action cannot be maintained by a collector of taxes against a mortgagee of land who has entered thereon and foreclosed his mortgage after the lien created by the statute has expired.—*Sherwin v. Bank*, 137 Mass. 444.

Mortgaged Estates.—Mortgagors and mortgagees are deemed joint owners of real estate for purposes of taxation until possession of the mortgaged estate is taken by the first mortgagee, and the collector of taxes upon application shall give to any mortgagor or mortgagee a tax-bill showing the whole tax on the estate and the amount included in the valuation thereof as the interest of each mortgagee and of the mortgagor respectively. C. 12, S. 18.

Resident Mortgagee, Demand on.—If a mortgagee of land situated in the place of his residence, before the first day of September of the year in which the tax is assessed, gives written notice to the collector that he holds a mortgage on land, with a description of the land, the demand for payment shall be made on the mortgagee instead of the mortgagor. C. 13, S. 36.

Notice to Tax Payer.—The collector shall forthwith, after receiving a tax-list and warrant, send to each person who is assessed, resident or non-resident, notice of the amount of his tax. If such notice is sent by mail, it shall be postpaid, and shall be directed to the city or town in which the assessed person resided on the first day of May of the year in which the tax was assessed, and, if he resides in a city, it shall, if possible, be directed to the street and number of his residence. If

he is assessed for a poll-tax only, the notice shall be sent on or before the second day of September of the year in which the tax is assessed. An omission to send such notice shall not affect the validity of a tax or of the proceedings for collecting it. C. 13, S. 3.

Occupants of Land, Live Stock Liable.—If a person is taxed for land in his occupation, but of which he is not the owner, the collector, after demand for payment, may levy the tax by distress and sale of the cattle, sheep, horses, swine, or other stock or produce of such estate, belonging to the owner thereof, which, within nine months after such assessment has been committed to him, may be found upon the premises, in the same manner as if such stock or produce were the property of the person so taxed; but such demand for payment need not be made if the person on whom the tax is assessed resided within the precinct of the collector at the time of the assessment, and subsequently removes therefrom and remains absent three months. *Ibid.*, S. 24.

Part Payment.—The owner of the estate, or person assessed or a person in behalf of said owner or person, may tender to the collector not less than twenty-five per cent of the tax, except a poll-tax, which shall be received, receipted for, and applied toward the payment of the tax. Such part payment, however, shall not affect a right of tender, lien, or other provision of law for the recovery of the amount of such tax or interest or costs thereon remaining due. *Ibid.*, S. 19.

Payment by Person not Owner.—If a person other than the owner of the fee, rightfully pays the taxes assessed upon land to the collector or treasurer, before a taking or sale, the treasurer or collector shall give him a certificate of such payment stating the name of the person to whom the land is taxed, of the person paying the tax, and a substantially accurate description of the land. *Ibid.*, S. 65.

Proceedings, where Tax Title is Invalid.—If a collector has reasonable cause to believe that the title to land sold for non-payment of taxes or of assessments, is invalid by reason of an error, omission, or informality in the assessment or sale, he may, within two years after the date of the deed of such land, give notice to the record owner thereof, requiring him to release any interest which he may have in such land under said deed, and to receive from the town the amount paid therefor with interest at ten per cent, or to file with the collector a statement that he refuses to release such interest. *Ibid.*, S. 70.

If within thirty days after such notice, such owner does not comply therewith, the collector shall cause a copy thereof with an affidavit of the service of such notice and of the facts in the case, to be recorded in the registry of deeds; he shall also give notice of such proceedings to the treasurer of the town, who shall upon reasonable demand pay over out of any funds in his hands the amount due in respect of said deed to the persons entitled thereto. *Ibid.*, S. 71.

If the collector has reasonable cause to believe that a tax-title held by the town under a sale or taking for payment of a tax is invalid by reason of any error, omission, or informality in the assessment, sale, or taking, he may disclaim and release such title by an instrument under his hand and seal duly recorded in the registry of deeds. *Ibid.*, S. 72.

Reassessed Taxes.— Taxes re-assessed shall be collected and paid over by the collector for the time being in the same manner as other taxes except that the name of the person to whom they were originally assessed shall be stated in the tax-list; and the bond of such collector shall apply to such taxes. C. 12, S. 87.

Sales, Notice.— The collector shall give notice of the time and place of sale of land for payment of taxes by publication thereof. Such notice so published shall contain a substantially accurate description of the several rights, lots, or divisions of the land to be sold, the amount of the tax assessed on each, and the names of all owners known to the collector. C. 13, SS. 38, 40.

An advertisement is defective which offers to sell undivided portions of an estate, and no title passes by the collector's deed.— *Wall v. Wall*, 124 Mass. 66.

An advertisement of sale for non-payment of taxes which incorrectly states the year for which the tax is assessed is fatally defective.— *Knowlton v. Moore*, 136 Mass. 32. So a misstatement of the amount of the tax in an advertisement avoids the deed to the purchaser.— *Alexander v. Pitts*, 7 Cush. 503.

Sale by Auction.— If the taxes are not paid, the collector shall, at the time and place appointed for the sale, sell by public auction the smallest undivided part of the land which will satisfy the taxes and necessary intervening charges, or the whole, if no person offers to take an undivided part; and may at such sale require of the purchaser an immediate deposit of such sum as he shall consider necessary to insure good faith in the payment of the purchase money, and on failure of the purchaser to make such deposit forthwith, the sale shall be void and another sale may be made as hereinbefore provided.

The collector may adjourn the sale from time to time not exceeding seven days; and he shall give notice of every adjournment by a public declaration thereof at the time and place appointed for the sale. *Ibid.*, SS. 41, 42.

A tender of the amount due for taxes on land advertised for sale for non-payment of taxes but not yet sold, need not include any fees of the collector for a levy upon the land, or for travel to make a return, or for a commission on the tax.— *Converse v. Jennings*, 13 Gray, 77.

A tax title is not good unless it appears by the collector's deed or otherwise that the land was so divided that no greater portion thereof was sold than was necessary to satisfy the tax and intervening charges, or that it could not be conveniently divided to that extent.— *Crowell v. Goodwin*, 3 Allen, 535.

An adjournment of sale for a "spell" on the same day is not such an adjournment from time to time as the statute requires.— *Oakham v. Hall*, 112 Mass. 539.

An undivided interest in land cannot be sold for non-payment of taxes.—*Wall v. Wall*, 124 Mass. 65.

The deed given by the collector must state the cause of sale.—*Adams v. Mills*, 126 Mass. 280.

Where the collector sold the whole of the land and some resident owners present at the sale accepted their shares of the proceeds, it was *held* not such a waiver of informalities as to give validity to the sale.—*Reed v. Crapo*, 127 Mass. 39.

A sale is not invalid if the collector sells the whole when a part of the land might conveniently have been sold.—*Southworth v. Edmonds*, 152 Mass. 203.

At a sale advertised at the same time in the same newspaper, by the same collector, for the taxes of two successive years, land was sold to one person for the tax of the earlier year, and later, for the tax of the year following, to another person. *Held* that the second sale was valid and the purchaser was entitled to the land.—*Keen v. Sheehan*, 154 Mass. 208; *Pinley v. Pinley*, 164 Mass. 335; *Lancy v. Snow*, 180 Mass. 411.

A statement of a tax in an advertisement of a tax sale for the taxes of two years *held* invalid, because the amount for each year was not stated but only the aggregate for both years.—*Lancy v. Snow*, 180 Mass. 411.

Insufficient Bid.— If no person bids at such sale said amount or more, or if the person to whom the land is sold does not within ten days pay to the collector the sum bid by him, the collector shall make an affidavit of the facts, which shall be recorded in the registry of deeds within thirty days of the date at which the land was offered for sale, after which said affidavit shall be in the custody of the city or town treasurer, and the same, or a copy thereof, certified by the register of deeds, shall be *prima facie* evidence of the facts therein stated.

The collector shall, within thirty days after the recording of said affidavit, take possession of said land in behalf of the city or town, which may make regulations for the custody, management, and sale thereof, and taxes shall be assessed thereon in the name of such city or town until it shall be sold; and such subsequent sale and the money received therefrom shall be held as provided in section 67. C. 13, SS. 68, 69.

Sales, Purchase for Town.— If at the time and place of sale no person bids for the land so offered for sale an amount equal to the tax and charges, and if the sale has been adjourned one or more times, the collector shall then and there make public declaration of the fact; and, if no bid equal to the tax and charges is then made, he shall give public notice that he purchases for the town by which the tax is assessed, the said land as offered for sale at a price not exceeding the amount of the tax and the charges and expenses of the levy and sale, which amount shall be allowed to him in his settlement with such town. *Ibid.*, S. 46.

Deed to Town.— If the town becomes the purchaser, the deed to it, in addition to the statements required by section 43 shall set forth the fact that no bid was made at the sale or that the purchaser failed to pay the amount bid, as the case may be, and shall confer upon

such city or town the rights and duties of an individual purchaser. *Ibid.*, S. 48.

By a deed from the collector the town or city takes a fee and seisin in the same manner as would an individual purchaser at a sale under the general statutes.—*Coughlin v. Gray*, 131 Mass. 57.

In Owner's Name.—The assessment, sale, or taking may be made in the name of one or more of the record owners at the date of assessment, and if so made, shall, subject to the provisions of section 41, be deemed to be in the name of the owner thereof. Every such sale or taking shall be of the whole estate and not of the undivided interest of any joint owner thereof. C. 13, S. 56.

The statute upheld.—*McLoud v. Mackie*, 175 Mass. 355.

Surplus proceeds.—The collector shall upon demand give an account in writing of every sale on distress or seizure and charges, and pay to the owner any surplus above the taxes, interest, and charges of keeping and sale. C. 13, S. 25.

If a collector sells more property taken under a warrant than is necessary to satisfy the tax and charges, he is liable in tort to the owner of the property for the excess.—*Cone v. Forest*, 126 Mass. 101.

Void, when.—If the purchaser of such land fails to pay the collector within twenty days after the sale the amount bid by him the sale shall be void, and the town shall be deemed to be the purchaser of the land, under the provisions of the preceding section. *Ibid.*, S. 47.

A purchaser failed to pay to the collector the sum bid for land at a tax sale within the time limited by law. *Held* that the collector must make a deed to the city; and a deed to the purchaser is void.—*Holt v. Weld*, 140 Mass. 578.

Collector's Deed to Purchaser.—The collector shall execute and deliver to the purchaser a deed of the land, which shall state the cause of sale, the price for which the land was sold, the name of the person on whom the demand for the tax was made, the places where the notices were posted, the name of the newspaper in which the advertisement of the sale was published, and the residence of the grantee, and shall contain a warranty that the sale has in all particulars been conducted according to law. The deed shall convey, subject to the right of redemption, all the right and interest which the owner had in the land when it was taken for his taxes, and the premises conveyed shall also be subject to and have the benefit of all easements and restrictions lawfully existing in, upon, or over said land or appurtenant thereto when so taken. Such deed shall not be valid unless recorded within thirty days after the sale. *Ibid.*, S. 43.

A sale of land for non-payment of taxes, assessed to the mortgagor in possession, passes to the purchaser the equity of redemption and the rights of the mortgagee.—*Parker v. Baxter*, 2 Gray, 185; *Worcester v. Boston*, 179 Mass. 48; *Abbott v. Frost*, 185 Mass. 399.

A collector's deed is invalid, if it does not state that the taxes were not paid within fourteen days after demand.—*Harrington v. Worcester*, 6 Allen,

576; *Downey v. Lancy*, 178 Mass. 465; *Reed v. Crapo*, 127 Mass. 39; *Langdon v. Stewart*, 142 Mass. 576.

A collector's deed is invalid if it merely states that the advertisement was made "in a public newspaper published in said county," and does not name the newspaper.—*Lunenburg v. Chair Company*, 118 Mass. 540; also if it omits the place of residence of the grantee.—*Knoulton v. Moore*, 136 Mass. 32.

A sale of land for a valid tax gives a paramount title free from the ownership or incumbrance of rights previously existing which had been carved out of the property by an owner, or which had been acquired in it by prescription or otherwise.—*Hunt v. Boston*, 183 Mass. 306; *Perry v. Lancy*, 179 Mass. 183.

Name of Place Changed.—If land to be sold is situated in a place the name of which shall have been changed by law within three years preceding the sale, the collector shall designate such place in his notices of the sale by its former and existing name. C. 13, S. 39.

Option given by By-Law.—A city or town may, by ordinance or by-law, respectively, direct whether its collector shall exercise the power of sale or the power of taking to enforce the lien for taxes; and in default of such ordinance or by-law the collector may exercise either power at his discretion; but the passage of any such ordinance or by-law shall not render invalid any proceedings then pending. *Ibid.*, S. 76.

Redemption by Whom.—Any person having an interest in any such land may redeem it as provided in section 58 by paying to the collector of the place in which the land is situated the amount which he would be required to pay the purchaser, with one dollar additional. *Ibid.*, S. 60.

Redemption; Disposition of Money.—The collector shall receive any money so paid and give to the person paying it a certificate specifying the amount paid, the name of the person to whom, and the real estate on which the tax was originally assessed, and the registry of deeds and the book and page of the records therein where the collector's deed is recorded; and the recording of the certificate in said registry shall extinguish all right and title acquired under the collector's deed. The collector shall on demand pay over all money so paid, to the person entitled thereto as determined by him, except that he shall retain one dollar to be accounted for for the use of the city or town, and if the amount so paid is less than the purchaser was entitled to, the balance with interest at eight per cent per annum may after demand therefor be recovered by said purchaser against the person paying such amount, in an action of contract, if such action is commenced within three months after such payment to the collector. *Ibid.*, S. 61.

Unredeemed Land, Sale of.—If no person redeems land taken or purchased by a town within the time prescribed by law, its collector for the time being, without any vote or other special authority shall, within two years after the time for redemption has expired, sell the same by public auction, first giving the notice required by the pro-

visions of section 40 for sales for taxes; and if, from any cause, such sale shall not be made within two years, it shall be made by the collector when he deems best or at once upon the service upon him of a written demand of any person interested therein. The collector shall state in his notice of sale the smallest amount for which the sale will be made and shall, for the town, execute and deliver to the highest bidder therefor a quitclaim deed. He shall deduct from the proceeds of said sale the expense thereof, the amount named in the collector's deed or instrument of taking as due when the same was executed, all interest, charges, and subsequent taxes and assessments thereon. The balance shall be deposited with the town treasurer to be paid to the person entitled to the land, if demanded within five years; otherwise it shall inure to said town. *Ibid.*, S. 67.

Unimproved Land.—If unimproved and unoccupied land does not exceed four thousand square feet in area, or is laid out in lots or parcels no one of which exceeds such area, and the taxes unpaid for any one year do not exceed fifty cents on such land, or on any such lot or parcel thereof, the collector may give notice of the sale by publication of an advertisement stating the name of the owner of record of each lot on the first day of May of the year of assessment, the tax due thereon and the number of such lot on a street, way, or plan, without further description thereof. *Ibid.*, S. 49.

The collector may convey in one deed to the same purchaser or convey to the city or town, any number of the lots so advertised and sold, and said deed shall state the name of said owner of record of each lot conveyed therein, on the first day of May of said year, the amount of the taxes and cost due for each lot, and the number on the street, way, or plan of each lot respectively and need contain no further description of the lot, owner, or amount due.

The cost of advertisement shall be apportioned equally among all the lots specified in the advertisement; the cost of the sale shall be apportioned equally among all the lots sold, and the cost of the deed shall be apportioned equally among all the lots conveyed thereby. *Ibid.*, SS. 50, 51.

Sewer Assessments, Collection.— Demand for the payment of sewer assessments or charges may be made in like manner as demands for the payment of taxes, and sales for the non-payment of such assessments or charges and all proceedings connected therewith shall be made upon the same notices thereof, and shall be otherwise conducted in the same manner as sales for non-payment of taxes; and all proceedings subsequent to such sales, relative to redemption, the purchase and holding of the land by the town, the interest to be paid in case of redemption, and otherwise, shall be the same as when land is sold for

taxes. Said assessments and charges may also be collected by an action of contract in the name of the town. C. 49, S. 22.

Prior to the enactment of this statute an action by a city or town on contract to recover assessments and charges for drains and sewers would not lie.—*Rowbury v. Nickerson*, 114 Mass. 545.

Suit, Collection by.— If a tax remains unpaid for three months after it has been committed to the collector, he may maintain an action in his own name against the person assessed therefor in the same manner as for his own debt. C. 13, S. 32.

The statute of limitations does not begin to run until three months have expired after the tax has been committed to the collector, as the collector has no right of action except that given him by the statute.—*Harrington v. Glidden*, 179 Mass. 486.

Taking Land.— If a tax on land is not paid within fourteen days after demand therefor and remains unpaid at the date of taking the collector may take such land for the town, first giving three weeks' notice of his intention to exercise such power of taking; which notice may be served in the manner required by law for the service of subpoenas upon witnesses in civil cases or may be published, and shall conform to the requirements of section 38. He may also post a similar notice under the provisions of section 40.

The instrument of taking shall be under the hand and seal of the collector and shall contain a statement of the cause of taking, a substantially accurate description of each parcel of land taken, the name of the person to whom the same was assessed, the amount of the tax thereon, and the incidental expenses and costs to the date of taking, and shall be recorded in the registry of deeds; and the title to the land so taken shall thereupon vest in the town subject to the right of redemption. *Ibid.*, SS. 53, 54.

Trustee of Accumulating Fund.— If personal property in the possession of a corporation or an individual as an accumulating fund for the future benefit of heirs or other persons has been duly assessed to them in accordance with clause 6 of section 23 of chapter 12, and they neglect, for one year after the tax has been committed to the collector, to pay the same, the collector may maintain an action in his own name against the trustee therefor as for his own debt; and the amount paid by said trustee may be allowed in his account. *Ibid.*, S. 34.

Prior to the enactment of this statute a bill in equity could not be maintained against trustees for a tax assessed under Gen. Stat., c. 11, § 12, cl. 6, to the heirs, although they were not personally liable.—*Freetown v. Fish*, 124 Mass. 355.

Warrant, Form.— The warrant shall specify the duties of the collector as prescribed by law in the collection of taxes, the times when, and the person to whom he shall pay them, shall be substantially in the form heretofore used and need not be under seal. C. 12, S. 69.

The omission in the warrant to the collector to direct him to sell distrained goods within seven days did not affect its validity.—*King v. Whitcomb*, 1 Met. 331.

An erroneous direction in the warrant, if not followed, does not render it invalid.—*Barnard v. Graves*, 13 Met. 85.

An officer who serves a warrant directing him to collect from a person a certain sum named due as his portion of a certain tax, "whereof said person has neglected to make payment and thereof is delinquent," is not liable in damages to the delinquent tax-payer on the ground that it did not appear on the face of the warrant that it was issued in the lawful exercise of a power conferred by law.—*Sherman v. Torrey*, 99 Mass. 472.

It is not necessary that a warrant committed to a collector of taxes should in terms specifically direct the sale of real estate.—*Westhampton v. Searle*, 127 Mass. 502.

Where there was no informality in the proceedings under it, it was held that a warrant simply directing the collector to collect it "according to law" was valid.—*Leominster v. Conant*, 139 Mass. 384.

New Warrant.— If a warrant issued for the collection of taxes is lost or destroyed, the assessors may issue a new warrant therefor, which shall have the same force and effect as the original warrant. *Ibid.*, S. 70.

Warrant of Return.— Every collector of taxes, constable, sheriff, or deputy-sheriff, receiving a tax-list and warrant from the assessors, shall make a written return thereof with his tax-list and of his doings thereon at such times as the assessors shall in writing require. C. 13, S. 2.

Runs Throughout State.— If a tax assessed upon a person remains unpaid for fourteen days after demand therefor, the collector may issue his warrant to the sheriffs of the several counties, or their deputies, or to any constable or deputy-collector of taxes of the city or town for which he is the collector, directing them and each of them to distrain the property or take the body of the person assessed and to proceed as required of collectors in like cases. The warrant shall run throughout the commonwealth, and any officer to whom it is directed may serve it and apprehend the person in any county. *Ibid.*, S. 31.

The warrant of distress need not recite the facts which authorize the collector to issue it.—*Cheever v. Merritt*, 5 Allen, 563.

CONSTABLES.

Election or Appointment.— In Massachusetts, constables are chosen by ballot at the annual town meeting, to serve for one year; but the selectmen are authorized to appoint as many constables in addition to those elected by the town as, in their opinion, may be necessary. C. 11, S. 334; C. 25, S. 87.

Exemptions.— No person shall be required to accept the office of constable who holds a commission as an officer of the United States or of the commonwealth, who is a member of the council, of the general court, a minister of the gospel, an engine man, a member of the fire department, or who has been a constable or collector of taxes in the town within the preceding seven years. C. 11, S. 348.

Acceptance or Refusal of Election.—A person chosen constable at a town meeting shall, if present, forthwith declare his acceptance or refusal of his office. If he does not accept the office, the town shall, if official ballots are not used, elect another person to the office, and continue so to elect until some person accepts the office and is sworn. *Ibid.*, S. 357.

Oath of Office.—Before entering upon the duties of his office, he is sworn to the faithful performance thereof. *Ibid.*, S. 347.

Collector of Taxes.—The constable shall also be collector of taxes, unless another person is specially chosen or appointed as such. *Ibid.*, S. 334.

Vacancy, how Filled.—If there is a failure to elect or a vacancy occurs in the office of constable, the selectmen shall appoint in writing a person to fill such vacancy. *Ibid.*, S. 361.

Penalty for Failure to Accept Office.—Whoever having been chosen to the office of constable, able to perform the duties of the office and not exempt by law from holding the office, refuses to take the oath of office and to serve as constable shall forfeit twenty dollars. If he is present in town meeting and declares his refusal or neglects for seven days after being duly summoned, to take such oath or to pay such forfeiture, he shall be prosecuted therefor by the treasurer. C. 25, S. 97.

Bond; Powers.—A constable who has given a bond to the town in the sum of not less than one thousand dollars, which has been duly approved and filed as required by law may within his town serve any writ or other process in a personal action in which the damages claimed do not exceed two hundred dollars, in replevin in which the subject-matter is not above that sum and any writ or other process under the provisions of chapter 181 for the recovery of the possession of land. *Ibid.*, S. 88.

Any constable who has given such bond in a sum not less than three thousand dollars may within his town serve any such writ or process in which the damages laid do not exceed three hundred dollars and any process in replevin in which the subject-matter does not exceed that sum in value. *Ibid.*, S. 89.

Any person injured by a breach of the condition of such bond may at his own expense sue thereon in the name of the town. *Ibid.*, S. 90.

In a suit upon a recognizance taken under Stat. 1857, c. 141, § 10, the plaintiff cannot inquire into the regularity of the bond of a constable *de facto*, by whom the notice to him of the debtor's application to take the poor debtor's oath was served.—*Elliott v. Willis*, 1 Allen, 461.

A constable has no authority by Rev. Stat., c. 15, to serve a writ of replevin except in a case where the sheriff or his deputy is a party to a suit in which the value of the property to be replevied does not exceed the sum of seventy dollars.—*Conner v. Palmer*, 13 Met. 302.

The provisions of Stat. 1837, c. 94, § 2, that no constable shall be competent to serve civil process, until he shall have given bond to the city or

town for the faithful performance of his duties, applies to constables in office at the time of its passage.—*Whitney v. Blanchard*, 2 Gray, 208.

A constable's bond in Boston is properly made to the treasurer of the city. Attachment of goods belonging to another than the defendant is a breach of the bond.—*Tracy v. Goodwin*, 5 Allen, 409.

The service of a writ duly commenced by a constable may be completed by him after the expiration of his term of office.—*O'Brien v. Annis et al.*, 120 Mass. 143.

The refusal of a constable to restore attached property to the owner, upon the termination of the action in the latter's favor, is a breach of the condition of his official bond; a judgment against him for the conversion of the property is conclusive upon him and his sureties in an action on the bond.—*Dennie v. Smith*, 129 Mass. 143.

Notices in civil suits may often be served by interested parties; but in the case before us the constable who served the notice was not an interested person, and his service is not vitiated because he was one of the board of health.—*Commonwealth v. Alden*, 143 Mass. 114.

A constable cannot make a levy of an execution by sale of land where he has no jurisdiction in the towns where the statute requires notifications to be posted up.—*Lewis v. Norton*, 159 Mass. 432.

A bond given by a constable in a city other than Boston to the treasurer thereof is, if it was voluntarily executed and contains nothing in the condition contrary to law, a valid bond at common law.—*Farr v. Rouillard*, 172 Mass. 303.

Section 114, Rev. Stat., c. 27, authorizes a constable to serve process within his own town in any proper case where the subject-matter involved does not exceed three hundred dollars in value, and he can lawfully act where the amount of the original judgment which was for more than three hundred dollars but has been reduced by payment to less than that before execution issued, and the execution was for less than three hundred dollars.—*Dalton-Ingersoll Co. v. Hubbard*, 174 Mass. 307.

Duties.—Constables may also serve warrants and processes in criminal cases, although their town, parish, religious society, or district is a party interested. They shall have the powers of sheriff to require aid in the execution of their duties. They shall take due notice of and prosecute all violations of the laws respecting the observance of the Lord's day, profane swearing, and gaming. They shall serve all warrants and other processes directed to them by the selectmen of their town for notifying town meetings or for other purposes. C. 25, S. 91.

Jurisdiction.—A constable in the execution of a warrant or writ directed to him, may convey prisoners and property in his custody under such process beyond the limits of the town, either to the justice who issued it or to the jail or house of correction of his county. *Ibid.*, S. 92.

If a warrant is issued against a person for an alleged crime committed within any town, any constable thereof to whom the warrant is directed may apprehend him in any place in the commonwealth. *Ibid.*, S. 93.

Arrest Without Warrant.—They are authorized to arrest without a warrant any person whom they find in the act of illegally selling, transporting, distributing, or delivering intoxicating liquor, and to seize the liquor, vessels, and implements of sale in the possession of such person, and detain them until warrants can be procured against such person,

and for the seizure of said liquor, vessels, and implements. They are required to enforce or cause to be enforced the penalties provided by law against every person who is guilty of violating any law relative to the sale of such liquor, if they can obtain reasonable proof of such violation. C. 100, S. 86.

Courts, Service in.—The justice of each police and district court, except the East Boston district court, may designate a constable to attend the sessions thereof to preserve order and to serve such warrants, mittimuses, precepts, orders, and processes as may be committed to him by said court. C. 160, S. 62.

Dogs.—Under a warrant from the selectmen of a town a constable is required to kill or cause to be killed all dogs not licensed and collared according to law, and to return such warrant on or before the first day of October following to the chairman of the selectmen issuing the same, and state in his return the number of dogs killed, the names of the owners or keepers thereof, and whether all unlicensed dogs in his town have been killed, and the names of persons against whom complaints have been made, and whether complaints had been entered against all persons who have failed to comply with the law. C. 102, SS. 143, 144, 158.

Elections, Service at.—The board or officer in charge of the police force of each town shall detail a sufficient number of police officers or constables for each polling-place at every election therein to preserve order and to protect the election officers and supervisors from any interference with their duties and to aid in enforcing the provisions of this chapter. C. 11, S. 221.

Such officers shall arrest without a warrant any person detected in the act of violating the caucus or election laws. They shall prosecute any offender against such laws when any offense is reported to them by any election officer. *Ibid.*, SS. 421, 224.

Fishery Laws.—In common with the selectmen and the police officers of towns constables are required to enforce the provisions of the law relating to smelts, trout, salmon, lobsters, tautogs, and other fish. *Ibid.*, SS. 63, 71, 72, 77, 86, 87, 136.

Intoxicating Liquors; Search Warrants.—Constables are required to execute search warrants issued by any competent authority, commanding them to search premises in which it is alleged that intoxicating liquors are deposited, and to seize such liquor, the vessels in which it is contained, and all implements of sale and furniture used, or kept and provided to be used in the illegal keeping or sale of such liquor. C. 100, S. 72.

Jurors; Venires.—Venires for jurors received by a constable from the sheriff of the county are served by him forthwith upon the selectmen and town-clerk of his town. C. 176, SS. 10, 11.

A constable to whom a venire has been committed shall, four days at least before the time when the jurors are required to attend, summon each person who is drawn by reading to him the venire or by leaving at his place of abode a written notice of his having been drawn and of the time and place of the sitting of the court at which he is required to attend, and shall make a return of the venire with his doings thereon to the clerk of the court before the sitting of the court by which it was issued. *Ibid.*, S. 24.

Keeper, Power to Appoint.— A constable holding personal property attached by him may appoint a keeper, and in such case, shall upon the written request of the defendant remove such property or the keeper without unreasonable delay. C. 167, S. 43.

Powers in Another County.— A constable when engaged in the execution of a warrant for the commitment of a person to a penal institution which is not in his own county, shall have the same powers in any county through which he may pass as he would have in his own county in the performance of a similar duty. C. 220, S. 32.

Service of Process.— It is their duty to serve all lawful processes issued by a court, judge, judicial officer, or county commissioners which are legally directed to them. C. 166, S. 6; C. 20, S. 23.

Search Warrants, Execute.— A constable to whom a search warrant is directed, if he finds property or articles therein described, shall seize and safely keep them under the direction of the court or trial justice, so long as is necessary for the purpose of being produced or used as evidence on any trial. C. 217, S. 3.

Taxes, Warrants for.— Every constable receiving a tax-list and warrant from the assessors shall collect the taxes therein set forth, and pay over the same to the town treasurer according to the warrant, and shall make written return thereof with his tax-list and of his doings thereon at such times as the assessors shall in writing require. In towns he shall on or before the fifth day of each month, pay over to the town treasurer all money received by him during the preceding month on account of taxes. C. 13, S. 2.

The constable may execute a warrant issued by a collector of taxes, or town treasurer acting as collector, directing him to distrain the property or take the body of a person assessed who has not paid his taxes. The warrant shall run throughout the commonwealth and any officer to whom it is directed may serve it and apprehend the person in any county. *Ibid.*, S. 31.

Warrants, Served where.— Warrants and other criminal processes may be directed to and served by a constable of any town in the county in which the court by which they are issued has jurisdiction. Said courts, justices, special justices, and clerks may issue summonses or

other processes for witnesses in criminal cases, to run throughout the commonwealth, and to be served by a constable in his own town or in any other county, city, or town in which any witness may be found. C. 160, S. 38.

Penalties for Neglect of Duty.—Severe penalties are denounced against officers, including constables, for wilful delay in the service of a warrant or other process committed to them; for refusal to arrest or suffering the escape of a person against whom they have a lawful process; and for a refusal to arrest upon the order of a justice of the peace or other competent authority. C. 210, SS. 29, 30, 32.

FENCE-VIEWERS.

Two or more fence-viewers are chosen annually at the annual town meeting. C. 11, S. 334.

Duties.—It is the duty of fence-viewers upon request of either party complaining of an adjoining owner, after notice, to view the fence and if they determine that it is insufficient and that a partition fence is required between the lands of the respective occupants, they shall so state in writing to the delinquent occupant and direct him to repair or build the same within a reasonable time, not exceeding fifteen days. C. 33, S. 3.

Upon request of either party in a controversy between adjoining owners in regard to the repairs of a partition fence, two or more fence-viewers may, after due notice to each party and a hearing, assign in writing to each party his share thereof, and direct the time within which he shall erect or repair his share of the fence. *Ibid.*, S. 5.

If land belonging to two persons in severalty has been occupied in common without a partition fence between them and one of the occupants desires to occupy his part, and the other occupant refuses or neglects to divide the line where the fence ought to be built or to build a sufficient fence on his part of the line when divided, the party desiring it may have the same divided and assigned by two or more of the fence-viewers in the manner provided by this section.

If the division line between their lands is in dispute or unknown the fence-viewers may designate a line on which the fence shall be built and may employ a surveyor therefor. *Ibid.*, SS. 9, 13.

In case a fence shall be built and it is afterward determined that the true division line is in another place and in case of neglect or refusal by either occupant of the land to remove or rebuild his share thereof, the other may apply to two or more fence-viewers who shall view the premises and assign a time within which the fence shall be removed and rebuilt. *Ibid.*, S. 14.

If the line upon which a partition fence is to be made or divided is a boundary line of a city or town, or is partly in one and partly

in another city or town, a fence-viewer shall be taken from each place. *Ibid.*, S. 15.

The statutory obligation of a railroad to fence is an obligation not to travelers but only to adjoining owners.—*Byrnes v. Boston & Maine R. R.*, 181 Mass. 322.

FIELD DRIVERS.

Two or more field drivers are chosen annually at the annual town meeting. The office of field driver is among the most ancient and was formerly not the least important of town offices. Under the names of hayward and hog reeve, the office was borne upon the early records, and the duties performed in the early days, when fields and homesteads were not as well protected from invasion by beasts, straying at large, their duties were much more onerous than they are at the present time. The duties of field drivers are now generally considered merely nominal, but the statutes prescribe that every field driver shall take up horses, asses, mules, neat cattle, sheep, goats, or swine going at large in the highways or town ways, or on common and unimproved land, within his town, and not under the care of a keeper.

Beasts so taken up are required to be forthwith impounded in the town pound, and the field driver is entitled to his fees for such services. C. 33, SS. 22-24.

FIRE ENGINEERS.

See "Selectmen."

FIREWARDS.

The selectmen may annually in March or April appoint firewards and forthwith give them notice thereof. They are required, if a fire breaks out, to repair thereto forthwith and shall carry a suitable staff for a badge of office. They are empowered in certain cases to direct any building to be pulled down or demolished, if they consider it necessary, in order to prevent the spread of the fire. C. 32, SS. 9-11.

In order to maintain an action against the town for destruction of a house to prevent the spread of fire, the owner must show that the house was destroyed by order of three firewards, and not by the action of one only.—*Ruggles v. Nantucket*, 11 Cush. 433.

A by-law made by a board of firewards authorizing one director to exercise the whole power of the board in pulling down or destroying buildings to prevent the spread of fire held to be void, as repugnant to law.—*Coffin v. Nantucket*, 5 Cush. 269; *Parsons v. Pettingill*, 11 Allen, 507.

A city is not liable for a personal injury resulting from the negligence of officers and members of its fire department in performing their duties.—*Fisher v. Boston*, 104 Mass. 87.

A railroad is liable for running a train across a hose placed across its tracks while being used to extinguish a fire, the cutting off the water being the indirect cause of the destruction of a burning building.—*Metallic Compression Casting Co. v. Fitchburg R. R.*, 109 Mass. 277.

An owner of a building failing to pay rates, the water was shut off from his building and from a hydrant in the street near by. The building was burned. Held that the owner could not recover against the city for the loss.—*Tainter v. Worcester*, 123 Mass. 311.

Powers.— Firewards may during a fire require assistance for extinguishing it and for the removal of furniture or other property from a building which is on fire or in danger of fire, and may appoint guards for the same, and may suppress all tumults and disorders at such fire. They may direct the stations and operations of the engine-men, with their engines, and of all other persons for the purpose of extinguishing the fire. *Ibid.*, SS. 14, 15.

Forester, Forest, Firewards.— In any town which accepts the provisions of the law the selectmen are required to appoint a forester, and may at any time remove him from office and fill vacancies. He has charge of all trees except public shade trees, within the limits of a highway or other public way or square in the town. He also acts as chief forest fireward and as such appoints a suitable number of deputies, one of whom is assistant chief, and in his absence performs his duties. He has sole control of the extinguishment of forest fires in his town. C. 53, S. 14; C. 32, SS. 17-25.

HEALTH BOARD.

Election.— A town may elect a board of health consisting of three persons to serve for terms of one, two, and three years respectively. After the first election the town is required at its annual meeting to choose one member of such board who shall hold office for three years from the day following such meeting and until another is chosen and qualified in his stead. If no such board is chosen the selectmen act as a board of health. In towns having more than five thousand inhabitants, at least one member of the board, unless composed of selectmen, shall be a physician. C. 11, S. 338.

Duties.— It is the duty of the board of health to have general charge of all measures and agencies for the protection and preservation of the public health in their town, and to that end they may make and prescribe regulations concerning nuisances, drainage, both public and private, the isolation of persons infected with contagious and infectious diseases, and the fumigation and disinfection of houses and places where such diseases are prevalent. The particulars of their powers and duties in the above mentioned behalf are set forth in great detail in the statutes, to which the reader is referred. C. 75.

The jurisdiction of town boards of health over nuisances is summary and their orders are not subject to judicial examination or revision at the instance of the parties affected by them, before they are carried out. After they are carried out the question whether there was a nuisance, and, if so, whether it was caused or maintained by the parties charged therewith, may be litigated.—*Stone v. Heath*, 179 Mass. 385.

The statute upheld as constitutional.—*Commonwealth v. Pear*, 183 Mass. 242.

HIGHWAYS.

See "Selectmen, 'Ways.'"

HIGHWAY SURVEYORS.

Election.—The law provides that one or more surveyors of highways shall be elected at the annual meeting, if the town so votes. C. 11, S. 334.

A highway surveyor holds his office for one year, and upon the election of a surveyor, the office of road commissioner in the town terminates. No person shall be required to serve in the office of surveyor of highways oftener than once in three years. *Ibid.*, SS. 336, 348.

Duties and Powers.—If a surveyor of highways is chosen in a town, he shall have the exclusive control of the ordinary repair of highways, townways, streets, and bridges in the town without being subject to the authority of the selectmen. C. 25, S. 81.

Oath, Failure to Take; Penalty.—Whoever being chosen to the office of surveyor of highways and not being exempt by law from holding such office, fails, after being duly summoned, to take the oath of office shall forfeit ten dollars. C. 11, S. 97.

Public Ways and Bridges.—Highways, townways, causeways, and bridges shall, unless otherwise provided, be kept in repair at the expense of the city or town in which they are situated, so that they may be reasonably safe and convenient for travelers, with their horses, teams, and carriages, at all seasons. C. 51, S. 1.

It is the duty of the surveyor to see that the road is made passable, safe, and convenient. A way or street once laid out pursuant to law falls under the care of the surveyors and the town authorities have nothing further to do with it.—*Callender v. Marsh*, 1 Pick. 427.

The duty required of towns, Stat. 1786, c. 81, to keep highways in repair, extends to defects and obstructions caused by snow. If a town shall neglect to make sufficient provision for repair of highways, the surveyor must take such measures as are pointed out in the statute.—*Loker v. Brookline*, 13 Pick. 343.

An action of tort lies against a city for damages occasioned by the obstruction, owing to negligence on the part of the city of a natural water-course, through a culvert under a highway, although plaintiff is owner of land on both sides of the highway.—*Parker v. Lowell*, 11 Gray, 353.

A city is not liable for an injury caused to a foot passenger on a sidewalk which the city is bound to keep in repair, by the falling of an overhanging mass of snow and ice from the roof of a building not owned by the city, although it has overhung the highway more than twenty-four hours.—*Hixon v. Lowell*, 13 Gray, 59.

A traveler who stops and ties his horse outside the limits of the highway, using due care, cannot, if the horse gets loose and runs upon the highway and suffers an injury from a defect therein, maintain an action against the town for such injury.—*Richards v. Enfield*, 13 Gray, 344.

Public highways are to be maintained and kept in repair by the towns and cities within which they are situated so that they shall be safe and convenient for all persons lawfully traveling thereon.—*Flagg v. Worcester*, *Ibid.* 603.

A town is liable for an injury to an elephant while being driven over a highway, caused by a defect in the way, if in the opinion of the jury the elephant at the time and place and in the circumstances of the accident was an animal which it was reasonably proper to take over a highway kept for the reasonable use of the public.—*Gregory v. Adams*, 14 Gray, 242.

An indictment against a town for suffering a highway to be out of repair is supported by proof that the way is inconvenient, without proof that it is absolutely unsafe, but proof of slight inconvenience would not be sufficient.—*Commonwealth v. Taunton*, 16 Gray, 229.

The obligation of a town to make roads safe and convenient for travelers continues where such roads are crossed by railroads at grade except so far as the necessary use of the crossing by the railroad may prevent it, and subject to such specific directions as may be given by the county commissioners.—*Davis v. Leominster*, 1 Allen, 182.

If a town has neglected to repair a part of a road which it was its duty to maintain, it is no defense to an indictment for the neglect to show that this part would be of no immediate practical use, because a portion of a bridge with which the road connects and which the town is not obliged to maintain has been swept away and not rebuilt.—*Commonwealth v. Deerfield*, 6 Allen, 449.

It is the duty of the surveyor to make formal application to the selectmen for their written consent to the employment of persons to repair a highway in his district, if he has no sufficient means for making such repairs; and if he does not do so within a reasonable time, he cannot recover for an injury sustained by reason of a defect in such highway. He has no authority to expend moneys committed to him for repairs in constructing a new road.—*Todd v. Rowley*, 8 Allen, 51.

An owner of land adjoining a highway may do any acts upon his own land to prevent surface water from coming thereon from the highway, and may stop up the mouth of a culvert built by the selectmen across the highway for the purpose of conducting such water upon his land, provided he can do so without exceeding the limits of his own land.—*Franklin v. Fisk*, 13 Allen, 211. See also *Turner v. Dartmouth*, *Ibid.* 293; 151 Mass. 182.

A case where there was no evidence on which it was competent for the jury to find that the way was defective.—*Macomber v. Taunton*, 100 Mass. 255.

Indictment for defective bridge held good.—*Commonwealth v. Newburyport*, 103 Mass. 135.

A town is not bound to erect barriers of any kind to prevent or warn travelers from straying off the side of a highway and falling into a dock twenty-five feet distant, although the land between the way and the dock is on a level with the way and open.—*Murphy v. Gloucester*, 105 Mass. 470.

The narrowness and crookedness of a way is not a defect for which a town is liable.—*Smith v. Wakefield*, *Ibid.* 473.

Not to light highways is not negligence on the part of a city or town.—*Randall v. Eastern R. R. Co.*, 106 Mass. 276.

In the city of Boston public footways may exist by prescription which the city is bound to keep in repair and is responsible for defects in.—*Gould v. Boston*, 120 Mass. 300.

A bicycle is not a carriage within the meaning of that term in Pub. Stat., c. 51, § 1.—*Richardson v. Danvers*, 176 Mass. 413.

Assignment of Districts.—In towns having more than one surveyor of highways, the selectmen shall assign annually in writing before the first day of May to each surveyor the limits and divisions of the ways to be kept by him. C. 51, S. 4.

The Stat. 1786, c. 81, § 2, is only directory, but if no assignment is made the surveyors must perhaps act together, or by the voice of the majority.—*Callender v. Marsh*, 1 Pick. 418.

A surveyor of highways has no authority to repair a way at his own expense and then call upon the town for an indemnity.—*Jones v. Lancaster*, 4 Pick. 149.

If a person is employed by the proper officers of a town to repair its highways, his right to maintain an action against the town to recover compensation for his work is not affected by the fact that the officers of the town acted from improper motives.—*McCormick v. Boston*, 120 Mass. 499.

Deficient Appropriation.— If a town neglects to vote a sufficient amount for the repair of ways, or there is a deficiency in the amount appropriated, or the amount is not paid to him and he is thereby rendered unable to make such repairs within his district, a highway surveyor or the road commissioners may employ persons to make the same who shall be paid therefor by the town. *Ibid.*, SS. 5, 6.

Under Rev. Stat., c. 25, § 13, the only authority of a surveyor of highways to charge a town for repairs of a road when the highway tax is insufficient therefor is by employing other persons to make such repairs, and those persons, and not the surveyor, may recover pay of the town for their labor.— *Armstrong v. Wendell*, 9 Met. 522.

A town is not liable for an injury sustained by reason of the negligence of a laborer employed by one of its highway surveyors to aid him in the performance of his duties.— *Walcott v. Swampscott*, 1 Allen, 101.

A person who has been elected surveyor of highways of a town cannot maintain an action against a town for money paid by him, without the direction or knowledge of the selectmen, for labor upon the highways of the town, before his district has been assigned to him for the year, although a portion of the money was expended judiciously and the selectmen sent him an order for that amount.— *Goddard v. Petersham*, 136 Mass. 235.

Highway surveyors have no power to bind a town by contracts not within the statute for ordinary repairs on highways, without authority from the town, conferred either by express vote or by a practice and custom adopted by it.— *Blanchard v. Ayer*, 148 Mass. 174.

Expended when.— Two-thirds at least of the money appropriated by a town for such repairs shall be expended before the first day of July next after the same is appropriated, or at such other time as the town may determine. *Ibid.*, S. 7.

Accounts.— Each surveyor shall annually, on the first Monday of July and also at the expiration of his term of office, render to the selectmen an account of all money expended by him on ways. For each neglect he shall forfeit not more than fifty dollars. *Ibid.*, S. 8.

Surplus Paid to Treasurer.— If money remains unexpended in the hands of a surveyor at the expiration of his term of office, he shall pay the same to the town treasurer, and if he fails so to do the treasurer, after demand, may recover the same, with twenty per cent in addition thereto, in an action of contract to the use of the town. *Ibid.*, S. 9.

Obstructions in Ways, Removal.— The officer who has the care of the trees belonging to a town and his assistants, but no other person, except as is provided in section 7 of chapter 53, may, and if required by the surveyors or road commissioners shall, trim or lop off trees, except public shade trees in towns, and bushes standing in ways, and, if ordered by a vote of the selectmen or road commissioners passed after public notice and hearing, shall cut down and remove such trees and bushes. The surveyors and road commissioners shall cause whatever obstructs such ways, or endangers, hinders, or incommodes persons traveling thereon to be removed; and shall forthwith cause snow to

be removed from such ways or to be so trodden down as to make them reasonably safe and convenient. C. 51, S. 10.

Driving a sleigh without the bells required by law does not make the driver liable, nor exempt the town from liability for injuries caused by collision with his sleigh upon a defective highway, unless his neglect contributes in some degree to the accident.—*Kidder v. Dunstable*, 11 Gray, 342.

A deed of land bounded by a highway ordinarily conveys the fee to the center of the highway subject to the easement of the public. A private individual may be held liable as a trespasser by the owner of land over which there is a public highway for acts done to the injury of the latter in widening or repairing the highway outside of the traveled part thereof; although a highway surveyor might properly have done the same acts.—*Hollenbeck v. Rowley*, 8 Allen, 473.

The decision of highway surveyors, acting within the scope of their authority, that a structure in a highway is an obstruction to public travel is conclusive. The fact that the rails of a private railroad were placed on a highway by permission of the town authorities, who permitted them to remain there for a series of years, does not prevent the surveyors of highways from removing them.—*Bay State Brick Co. v. Foster*, 115 Mass. 431; *Morrison v. Howe*, 120 Mass. 555.

If a surveyor of highways judges it to be for the interest of the town to dispose of soil, taken by him from land within the limits of a highway for the purpose of lowering the highway, by depositing it on his own land instead of using it elsewhere on the road, he is not liable to an action by the person who owns the fee of the road at the place where the soil was taken.—*Upham v. Marsh*, 128 Mass. 546.

County commissioners in laying out a highway have no authority to allow a portion of a building to remain in the highway "while the present building stands;" and after notice to the owner and failure by him to remove it, it can be removed by the surveyor of highways.—*Colburn v. Kittredge*, 131 Mass. 470.

Fences, not Removed when.—No surveyor, road commissioner, or other person shall, without an order from the board of health, remove or take down fences, gates, or bars which have been placed on a way for the purpose of preventing the spread of a disease dangerous to the public health. *Ibid.*, S. 11.

Water-Courses, Turn to Side of Way.—A surveyor or road commissioner may cause a water-course occasioned by the wash of a way to be conveyed by the side of the way; but the selectmen, upon complaint of a person whose building has been incommoded or whose business has been obstructed thereby may, after a view, order the surveyor or road commissioner to make alterations in such work. *Ibid.*, S. 12.

Contracts to Make or Repair Ways.—Towns may authorize their surveyors or road commissioners or any other person to enter into contracts for making or repairing the ways therein. *Ibid.*, S. 13.

A town which has duly chosen surveyors of highways may nevertheless authorize the selectmen to enter into contract for making or repairing the highways.—*Hawks v. Charlemont*, 107 Mass. 414; *Clark v. Russell*, 116 Mass. 455. The court defines the powers of selectmen.

INSPECTORS OF HAY, LIME, MILK, ETC.

See "Selectmen."

INTOXICATING LIQUORS.

Intoxicating liquors, as defined by statute, comprise ale, porter, strong beer, lager beer, cider, all wines, any beverage which contains more than one per cent of alcohol by volume, at sixty degrees Fahrenheit, and distilled spirits. C. 100, S. 2.

Licenses.—The law provides that no person shall sell, or expose or keep for sale spirituous or intoxicating liquor (with the exception of cider at wholesale by the original maker thereof, or by farmers made in quantities not exceeding the product of their own orchards and under certain conditions), unless authorized by a license issued to him by competent authority as provided by law.

The authority to grant licenses is vested in the selectmen and town clerk of the town in which the license is granted. The terms and conditions under which licenses are granted are specified in the statutes, to which the reader is referred. *Ibid.*, SS. 10-45.

Heavy penalties are denounced against violaters of the law and the officials having charge of its enforcement are held to a strict accountability. *Ibid.*, SS. 46-90.

The provision permitting the sale by the makers of native wines and cider manufactured in this commonwealth on terms more favorable than are granted for sales of the same articles produced in other states is unconstitutional and void under article I, § 8, of the constitution of the United States.—*Commonwealth v. Petranich*, 183 Mass. 217.

JUNK DEALERS.

See "Selectmen."

LIBRARIES.

A town may establish and maintain a public library for the use of its inhabitants, and, under regulations prescribed by the town, may receive, hold, and manage any gift, bequest, or devise for such library. A town which raises or appropriates money for the support of a free public library, or free public library and reading-room, owned by the town, is required to elect by ballot a board of trustees consisting of any number of persons, male or female, divisible by three, as the town may determine, unless such library has been acquired entirely or in part through some gift or bequest which contains other conditions or provisions for the election of its trustees, or for its care and management, which have been accepted by the town.

Trustees.—At the first election of such board, one-third of its members shall be chosen for one year, one-third for two years, and one-third for three years, and thereafter one-third shall be elected annually for a term of three years. The board organizes by electing a chairman and secretary from its own number, and, if the town so votes, a treasurer, who gives bond in an amount and with sureties to the satis-

faction of the selectmen. The town treasurer acts as treasurer of the board of trustees until the town otherwise directs. C. 38, SS. 6, 7.

Duties.—The board has the custody and management of the library and reading-room and of all property owned by the town relating thereto. All money raised or appropriated by the town for its support and maintenance is expended by the board, and all money or property received by gift or bequest for said library and reading-room, by the town, is administered by the board in accordance with the provisions of such gift or bequest. The board is required to make an annual report to the town of its receipts and expenditures and of the property in its custody. *Ibid.*, SS. 8, 9.

MILITIA.

See "Selectmen."

MODERATOR.

At every annual and special town meeting a moderator is chosen to preside over the proceedings, who is armed with certain powers and prerogatives of a somewhat despotic character. Without his leave no person may address the meeting, and at his command all shall be silent. If any one persists in disobeying his order, and refuses on his request to withdraw, the moderator may have him removed from the place of meeting by force and kept in confinement until the meeting is adjourned. C. 11, SS. 331, 333, 342.

Duties.—The moderator decides all questions of order and makes public declaration of all votes, and may administer in open meeting the oath of office to any town officer chosen thereat. If a vote so declared is immediately questioned by seven or more of the voters, he shall verify it by polling the voters or dividing the meeting, unless the town has by a previous order, or by its by-laws, provided another method. *Ibid.*, S. 332.

Term.—His term of office usually expires with the meeting over which he presides, but by a recent act of the legislature (C. 346, Acts of 1902), it is provided that any town adopting the act may choose at any annual election of town officers a moderator to preside at all town meetings except those for the election of state officers, whose term of office shall continue until the next annual town meeting and until his successor is elected and qualified.

In the larger towns of the commonwealth the practice has grown up of choosing a different moderator to preside on the first day of the annual town meeting at which the election of town officers is held, and another to preside over the subsequent meeting at which the remaining business is transacted.

The Stat. 1898, c. 548, § 173, providing that a candidate for election shall not act as an election officer in a voting precinct, does not apply to the moderator of a town meeting.—*Wheeler v. Carter*, 180 Mass. 382.

OVERSEERS OF THE POOR.

Election.— Three or more overseers of the poor are elected at the annual town meeting, to serve during the year. C. 11, S. 334.

A town may at an annual meeting or at a meeting held at least thirty days before the annual meeting at which such change is to become operative, vote to elect its overseers of the poor in the following manner:

If the number fixed by the town is three, it shall, at the annual meeting when such vote is passed, or at the next annual meeting, elect one for the term of one year, one for the term of two years, and one for the term of three years; and at each annual meeting thereafter it shall elect one for the term of three years.

A town may increase or diminish the number of its overseers of the poor by vote at an annual meeting.

One shall be elected annually. *Ibid.*, SS. 339, 340.

Women are eligible as overseers of the poor. *Ibid.*, S. 334.

Selectmen shall be overseers of the poor in towns which have not authorized the election of such officers. C. 25, S. 65.

In a case where the warrant for a town meeting contains an article "to see if the town will choose the selectmen surveyors of highways" and another "to choose all necessary town officers" naming those who are to be chosen by ballot, including selectmen, assessors, and overseers of the poor, and adding "all of said votes to be on one ballot," it was held that the town might elect five selectmen to be also assessors, overseers of the poor, and highway surveyors.— *Commonwealth v. Wentworth*, 145 Mass. 50.

Organization; Records.— Overseers of the poor shall within seven days after the annual town election choose a chairman and a secretary. The secretary may or may not be one of the overseers. They shall cause books to be kept so as to readily furnish the information required by law relative to all needy persons aided by them, and all further information as to relief applied for, the preservation of which may be of importance to the town or commonwealth, stating the amount and kind of aid given and the reasons for giving or refusing it. *Ibid.*, S. 71.

In a case on the issue whether a pauper had his domicile in the defendant town, the evidence offered to show that relief had been furnished was held inadmissible, the records of the overseers of the poor of the town having been destroyed.— *South Scituate v. Stoughton*, 145 Mass. 535.

Duties and Powers.— The overseers of the poor shall have the care and oversight of all poor and indigent persons lawfully settled therein so long as they remain at the charge of their respective towns, and shall see that they are suitably relieved, supported, and employed, either in the workhouse or almshouse, or in such other manner as the town directs, or otherwise at the discretion of said overseers, and shall have the same power and authority over persons placed under their care

which directors or masters of workhouses have over persons committed thereto. C. 81, SS. 2, 8.

A case in which the orders of the common council of a city in relation to the authority of city overseers of the poor are considered.—*Ireland v. Newburyport*, 8 Allen, 73.

Workhouse Directors.— If directors are not chosen by the town, the overseers of the poor shall be directors of the workhouse or almshouse. C. 30, S. 3.

Overseers of the poor have no authority, while acting as almshouse directors, to bind the town respecting the management of the almshouse for the next municipal year.—*Reed v. Lancaster*, 152 Mass. 500.

Apprentices.— A minor child who is, or either of whose parents is, chargeable to a town as having a lawful settlement therein or supported there at the expense of the commonwealth may, whether under or above the age of fourteen years, be so bound by the overseers of the poor, a female to the age of eighteen years or to the time of her marriage within that age, and a male to the age of twenty-one years; and provision shall be made in the contract for teaching such minor reading and writing, and arithmetic, and for such other instruction, benefit, and allowance, either within or at the end of the term, as the overseers may require. C. 155, S. 4.

A stranger having no authority over a minor cannot bind him out to service. An indenture which does not contain a provision for the instruction of the minor pursuant to the statute is void as to all the parties.—*Butler v. Hubbard*, 5 Pick. 250.

The overseers cannot bind out a male child until he is twenty years of age. An indenture in which the master merely covenanted to give the apprentice "the privilege of all the town school usually taught in the town" was held void.—*Reidell v. Congdon*, 16 Pick. 44.

A contract for service made with an adult female in Sweden held to be invalid.—*Parsons v. Trask*, 7 Gray, 473.

Acts and admissions of overseers in a binding out indenture are not admissible in evidence against the town in an action to show that the apprentice and his descendants have their settlement therein. The overseers act in performing such duties as public officers and not as agents of the town.—*New Bedford v. Taunton*, 9 Allen, 207.

Relief furnished by the town, with the consent of the father, to some of his minor children, he not being able to support them, is relief to him and enables the overseers to bind out his minor children as apprentices.—*Bardwell v. Purrington*, 107 Mass. 419.

Complaints Against Masters.— An action may be brought on the indenture for breach of covenant by the overseers of the poor or their successors. If brought by the overseers, it shall not abate by the death of any of them or by the succession of others to their office, but shall proceed in the names of the original plaintiffs or by the survivor of them, and the money recovered shall be deposited in the town treasury, to be disposed of as provided in section 13. *Ibid.*, S. 15.

Bastardy Complaints.—An overseer of the poor may prosecute or compromise a complaint in bastardy in certain cases. C. 82, SS. 2, 19.

If a woman who has made complaint under the bastardy act fails or neglects to prosecute it, a person authorized by one of the alien commissioners may prosecute it, without proving any request to her to proceed with it.—*Callinan v. Coffey*, 3 Allen, 477.

Where a complainant under the bastardy act neglects to prosecute the complaint, any one of the public officers authorized may intervene, but he should apply to the court and get leave.—*Noonan v. Brogan*, 3 Allen, 481.

It is well-settled law that the complaint filed in the superior court is the one upon which the defendant in a bastardy suit is tried. The supplemental complaint must aver all the facts necessary to sustain the prosecution; it may be amended.—*Jones v. Thompson*, 8 Allen, 334.

Where a complainant neglects to prosecute, the statutes do not authorize the officers named to make a new complaint, but to prosecute the existing one.—*Wheelwright v. Greer*, 10 Allen, 389.

Where a complainant has by mistake or accident failed to enter her complaint case at the beginning of a term, it is competent for the court to allow a post-entry at that or a subsequent term, if in its judgment a proper case is made out.—*Dineen v. Williams*, 138 Mass. 370.

Dead Bodies.—The overseers of the poor under certain conditions turn over to the officers of medical schools established by law in the commonwealth, the bodies of such persons who die in the town, as are required to be buried at the public expense, to be used within the commonwealth for the advancement of anatomical science. C. 77, S. 1.

Children, Neglected and Indigent.—It shall be the duty of the overseers of the poor in towns, as often as may be deemed necessary by them, to make diligent search throughout their respective towns for children under the age of sixteen who are suffering want through poverty, privation, or from the neglect of their parents or guardians, or of any other persons having them in charge, or from any cause whatsoever.

Where such children are found without parents or guardians or in charge of parents or guardians in the judgment of the overseers unfit to care for children by reason of mental incapacity, dissolute habits, or poverty, it shall be the duty of the overseers to provide for the temporary care of such children, until proceedings may be had against them if necessary, according to the provisions of chapter 334 of the Acts of 1903.

Reasonable expenses incurred by the overseers in furnishing aid as provided by this act shall be paid by the town wherein the persons have legal settlements, and, if they are without settlement, by the commonwealth, after approval by the state board of charity; and notice in writing shall be sent to the place of settlement or, if such persons are unsettled, to the state board of charity as is otherwise provided by law. Acts 1904, C. 356.

Placed in Families.—In every town, the overseers shall place every pauper child who is in their charge and is over two years of age in a respectable family in the commonwealth, or in an asylum therein,

to be there supported by the town according to the laws relative to the support of the poor until they can be otherwise cared for. The overseers, personally or by agent, shall visit such child at least once in three months and make all needful inquiries as to his treatment or welfare.

No such child who can be cared for as provided in section 5 without inordinate expense shall be retained in an almshouse unless he is a state pauper or an idiot, or otherwise so defective in body or mind as to make his retention in an almshouse desirable, or unless he is under the age of five years and his mother is an inmate thereof and is a suitable person to aid in taking care of him. C. 81, SS. 5, 7.

Infants, Unsettled, Custody.—The overseers of the poor of a town and the superintendent and board of trustees of the state hospital shall commit any indigent or neglected infants which have no known settlement in this commonwealth to the custody of the state board of charity, which shall provide for them in the Massachusetts Infant Asylum or in St. Mary's Infant Asylum or in a family or other suitable place, as it deems expedient for the interests of the child. C. 83, S. 20; C. 81, S. 26.

Deceased Pauper, Estate.—Upon the death of a pauper, then actually chargeable to a place within the commonwealth, the overseers of the poor thereof may take possession of all his real and personal property; and in default of administration upon his estate, within thirty days after his decease, they may sell and convey so much thereof as may be necessary to reimburse the expenses incurred for the pauper. They may sue for and recover possession of any real property withheld from them, and shall have the same remedy for the recovery of personal property, or its value, as an administrator might have in like case. C. 81, S. 37.

Where overseers of the poor, upon the decease of a pauper, take possession of his effects and administration is not taken out in thirty days from his decease, they may sell so much of the property as shall be necessary to repay the expenses incurred for such pauper, notwithstanding the appointment of an administrator before the sale takes place.—*Haynes v. Wells*, 6 Pick. 462.

The fact that a deceased pauper was entitled to a soldier's relief which had not been afforded him does not bar an action by the overseers of the poor to recover expenses incurred for his support as a pauper.—*Crossman v. New Bedford Institution for Savings*, 160 Mass. 503.

Families, Paupers in.—In towns in which paupers are provided for in families, the overseers are required to investigate each place and endeavor by contract to secure their proper care and maintenance. A full and complete record shall be kept, and a majority of the overseers shall certify upon the records that such investigation has been made, in each case, and they are satisfied that the paupers will be properly cared for. They shall, either by one of their own number, or by an agent duly appointed, at least once in every six months,

visit each place where the town paupers are supported, and a record of each visit and of the condition of the paupers visited shall be kept. *Ibid.*, S. 3.

Paupers and Insane Persons Deported.— Any pauper not born nor having a settlement in this commonwealth, who may conveniently be removed, may be conveyed on complaint of the overseers of the poor of any place, at the expense of the commonwealth, to any other state, or, if not a citizen of the United States, to any place beyond sea where he belongs. Any justice of the superior court or of a police district, or municipal court, or trial justice, or a judge of probate, in case of an insane state pauper, may by warrant directed to a constable or any other person therein designated, cause such removal to be made. C. 85, SS. 23, 24.

Minors, Removal from the State.— Overseers of the poor shall not remove, nor allow the removal of, a minor under their control beyond the limits of the commonwealth without the approval of the judge of probate, granted upon application and after notice to all parties interested and a hearing, unless such minor has a settlement in another state. Nor shall they withhold information relative to the maintenance of such minor from any person entitled to receive the same. C. 81, S. 29.

PAUPER SETTLEMENTS.

Legal settlements may be acquired in any city or town in the following manner, and not otherwise: C. 80, S. 1.

A law changing the rules of settlement and having the effect to transfer from one town to another the obligation to support paupers is not therefore unconstitutional.— *Bridgewater v. Plymouth*, 97 Mass. 382.

A town may by its vote admit that a person had a settlement therein.— *West Bridgewater v. Wareham*, 138 Mass. 305.

Married Women.— First. A married woman shall follow and have the settlement of her husband if he has any within the commonwealth; otherwise, she shall retain her own at the time of marriage if she then had any. *Ibid.*, cl. 1.

A married woman does not acquire a settlement in a town by her husband's living on an estate of freehold therein three years in succession, if during any part of that time the town where they formerly lived supported her as a pauper in a lunatic hospital out of the commonwealth.— *Oakham v. Warwick*, 13 Allen, 88.

One not having sufficient understanding to be able to make a valid contract respecting property or to deal with discretion in the common affairs of life cannot contract matrimony; a supposed marriage with such an one by a female does not change the place of her lawful settlement.— *Middleborough v. Rochester*, 12 Mass. 363.

A decree annulling a marriage made in another state where the defendant was an insane person, the decree having been granted on the ground of fraud and deceit in the contract of marriage, will not be recognized in this state, nor held to affect the settlement of the wife derived by her from her marriage here.— *Cumington v. Belchertown*, 149 Mass. 223.

Legitimate Children.—Second. Legitimate children shall follow and have the settlement of their father if he has any within the commonwealth; otherwise, they shall follow and have the settlement of their mother if she has any. *Ibid.*, cl. 2.

Legitimate children under age having the settlement of their mother acquire the new settlement which she gains by another marriage.—*Plymouth v. Freetown*, 1 Pick. 197; *Great Barrington v. Tyringham*, 18 Pick. 264.

One who becomes *non compos mentis* after having come of age does not follow the settlement of his father.—*Buckland v. Charlemont*, 3 Pick. 173.

A minor child, having the settlement of her deceased father, does not lose it, and acquire the settlement of its mother on her gaining a new settlement by a second marriage.—*Walpole v. Marblehead*, 8 Cush. 528.

A woman of twenty-one years of age and upwards does not follow or have the settlement of her father which is acquired by him in a town in this commonwealth after she reaches that age, although she continues to reside in his family.—*Shirley v. Lancaster*, 6 Allen, 31.

The widow, mother of a female pauper, became possessed of an estate sufficient to confer a settlement from three years' possession, but before the three years had passed the daughter married an alien, and although she continued to reside in her mother's family until after the expiration of the three years, she derived no settlement from her mother.—*Charlestown v. Boston*, 13 Mass. 469.

One who is *non compos mentis*, not having an estate sufficient to give him a settlement in virtue thereof, follows the settlement of his father, as well after he becomes of age as before.—*Upton v. Northbridge*, 15 Mass. 237.

The settlement of a widow, acquired by her after the death of her husband, is communicated to her infant children.—*Dedham v. Natick*, 16 Mass. 135.

A pauper's settlement derived from that of his father, which was derived from the provisions of law in force before February 11, 1794, is not defeated by Stat. 1870, c. 392, § 2, when his father's settlement prevents his acquiring the settlement his mother had before her marriage and consequently is not within the provisions of Stat. 1871, c. 379, § 3.—*Bellingham v. Hopkinton*, 114 Mass. 554.

Illegitimate Children.—Third. Illegitimate children shall have the settlement of their mother at the time of their birth if she then has any within the commonwealth. *Ibid.*, cl. 3.

Under the Stat. of 1789, c. 14, the settlement of an illegitimate child followed that of his mother and changed with it.—*Petersham v. Dana*, 12 Mass. 429.

Under Stat. 1793, c. 34, an illegitimate child has the settlement of its mother at the time of its birth, and retains the same until it acquires a new one by some act of its own.—*Boylston v. Princeton*, 13 Mass. 381.

An illegitimate child born after 10 April, 1767, and before the passing of Stat. 1789, c. 14, has the settlement of his mother at the time of his birth, if she then had any.—*Blackstone v. Seekonk*, 8 Cush. 75.

Freeholders.—Fourth. A person of the age of twenty-one years who has an estate of inheritance or freehold in any place within the commonwealth and lives thereon three consecutive years shall thereby acquire a settlement in such place. *Ibid.*, cl. 4.

A settlement in Massachusetts lost by a subsequent settlement gained in Maine before it became a state did not revive by that event.—*Mendon v. Bellingham*, 1 Pick. 153.

In order to gain a settlement in a town under Rev. Stat., c. 45, it was sufficient if the party was seized with an apparently good title, and there being no present right of entry outstanding in any other person.—*Brewster v. Dennis*, 21 Pick. 233.

A person under guardianship as a spendthrift gained a settlement under Stat. 1821, by living three years successively on an estate of inheritance or freehold purchased with his money and conveyed by deed to him, though it was purchased by his guardian without the sanction of the court of probate.—*Hopkinton v. Upton*, 3 Met. 165.

Under the Stat. of 1821, a person could not gain a settlement by having an estate in expectancy there being a preceding estate of freehold in another. The right of immediate occupancy was indispensable.—*Ipswich v. Topsfield*, 5 Met. 350.

A mortgagor occupying an estate by leave of the lessee for years of the mortgagee who has entered for condition broken cannot by such occupation acquire a settlement.—*Oakham v. Rutland*, 4 Cush. 172.

A husband who for three years successively occupies land assigned to his wife as dower obtains a settlement thereby. The occupation fraudulently of a freehold estate is not sufficient to gain a settlement.—*Canton v. Dorchester*, 8 Cush. 525.

A citizen of the United States living three years in any town within this state on land conveyed to him by a warranty deed gains a settlement in such town, although his grantor in fact had no title to the land.—*Boylston v. Clinton*, 1 Gray, 619.

One who has an estate as tenant by the curtesy initiate, in land held by his wife to her sole and separate use under Stat. 1845, c. 208, does not, by living thereon three years successively, gain a settlement.—*Leverett v. Deerfield*, 6 Allen, 431.

A person does not acquire a settlement in a town by living therein undisturbed for three years in a house built by mistake on land of another, adjacent to his own land, and having outbuildings upon his own land.—*Wellfleet v. Truro*, 9 Allen, 137.

Where the owner of land conveyed the same to A. and B., reserving a life interest for the use of C., and C., entered upon and occupied the land for three years in succession, it was held that he had an equitable freehold in the land and acquired a settlement in the town where the land lay, although the deed was not recorded.—*Conway v. Ashfield*, 110 Mass. 113.

Special circumstances under which the husband of a pauper acquired a settlement.—*Endicott v. Hopkinton*, 125 Mass. 521; *Worcester v. Springfield*, 127 Mass. 540.

The provisions of Pub. Stat., c. 83, § 1, cl. 4, do not apply to a married woman.—*Spencer v. Leicester*, 140 Mass. 224.

Resident Taxpayers.—Fifth. A person of the age of twenty-one years who resides in any place within this commonwealth for five consecutive years and within that time pays all state, county, city, or town taxes duly assessed on his poll or estate for any three years within that time shall thereby acquire a settlement in such place. *Ibid.*, cl. 5.

A person lived in a town nine years four months, then absconded and never returned, but his wife remained eight months longer. Held, that he had not resided for the ten years required to gain a settlement in the town.—*Athol v. Watertown*, 7 Pick. 42.

In a case where a highway tax was assessed against a pauper, the labor performed by him to the amount set against his name would not have any effect towards gaining for him a settlement.—*Southampton v. Easthampton*, 8 Pick. 380.

A person gains no settlement in a town, when highway taxes are not assessed against him, even if he resides there for ten years and possesses real and personal estate.—*Berlin v. Bolton*, 10 Met. 115.

A parent does not gain a settlement in a town by residing ten years therein and paying all taxes assessed against him for five of those years, if, during such residence, he is supplied by the town with money to aid him in supporting his helpless children.—*Taunton v. Middleborough*, 12 Met. 35.

The assessment of a tax on real estate to the occupant and the payment of

the same by him, not as his own estate, but in right of another, is a sufficient assessment and payment of a tax within the twelfth mode provided by statute for acquiring a settlement.—*Randolph v. Easton*, 4 Cush. 557.

Absence from a town for less than a year, with intention of returning to reside there, was not an interruption of the residence required for the purpose of gaining a settlement.—*Lee v. Lenox*, 15 Gray, 496.

Insanity occurring after a person has become an inhabitant of a town will not prevent his acquiring a settlement by living therein ten years consecutively.—*Chicopee v. Whately*, 6 Allen, 508.

The payment of highway taxes for five years with the requisite residence of ten years gave a settlement.—*Andover v. Chelmsford*, 16 Mass. 236.

A person who abandons his home and wanders about from town to town with no *animus revertendi* will have his domicile in the place where he actually resides, and cannot gain a settlement in the town where the home is which he so abandons.—*Wilbraham v. Ludlow*, 99 Mass. 587.

A man is not prevented from gaining a settlement in a town in which he has lived for ten years under a fictitious name and paid poll and other taxes for five years within that time, by the fact that he has deserted his wife and children meanwhile, in the town where he was formerly settled, and its officers have in one year of the ten given his wife aid without his knowledge or ever calling on him for payment.—*Wareham v. Milford*, 105 Mass. 293.

A case where a poll-tax was not duly assessed against a pauper and the payment for three years required by statute was not made.—*Plymouth v. Wareham*, 126 Mass. 475.

A pauper resided five years in Groton and paid poll-taxes there for three years, and afterwards removed to Ashby and resided there five years, paying poll-taxes for three years. Held, that he acquired a settlement in Groton.—*Fitchburg v. Ashby*, 132 Mass. 495.

The statute of 1874 does not give a settlement to a person who voluntarily ceased to be a resident of the commonwealth twenty years before it was enacted.—*Fitchburg v. Athol*, 130 Mass. 370.

A person, who, under Stat. 1870, c. 392, § 3, acquired a settlement in a town by serving in the quota of such town during the civil war for more than a year, may gain a new settlement in another town by residing there ten years and paying taxes for six years.—*Boston v. Warwick*, 132 Mass. 519.

An adult person in order to gain a settlement in a town or city by a five years' residence and payment of all taxes assessed to him "for any three years within that time," must have resided in the town during the whole of the three years for which the taxes were assessed.—*Taunton v. Wareham*, 153 Mass. 192.

Women, by Residence.—Sixth. A woman of the age of twenty-one years, including a married woman who has no settlement derived by marriage under the provisions of the first clause, and a widow, who resides in any place within this commonwealth for five consecutive years, shall thereby acquire a settlement in such place. *Ibid.*, cl. 6.

Stat. 1874, c. 274, § 2, relating to settlement of a woman in a town, applies only to unmarried women.—*Somerville v. Boston*, 120 Mass. 574.

The statute as amended to read, "shall be held to apply to married women," upheld.—*Cambridge v. Boston*, 130 Mass. 357.

A married woman over twenty-one years of age may acquire a settlement in a town by residing there for five consecutive years without receiving relief as a pauper, although she had ceased to reside there before the enactment of the former statute.—*Dedham v. Milton*, 136 Mass. 424.

A widow may acquire a settlement in a town by residing therein for five consecutive years without receiving relief as a pauper.—*Cambridge v. Boston*, 137 Mass. 152.

The words, "any unsettled woman," mean a woman unsettled at the time the statute took effect.—*Worcester v. Great Barrington*, 140 Mass. 243.

Peculiar conditions under which an unsettled married woman failed to acquire a settlement, because of the fact that her husband had a derivative settlement when the statute took effect.—*Middleborough v. Plympton*, 137 Mass. 325.

A married woman whose husband is living is under no legal obligation to support their children, even if he is imprisoned for crime; and her right to acquire a settlement by a residence of five years is not lost by her receiving money to be used for the board of her pauper child.—*Gleason v. Boston*, 144 Mass. 25.

The statute includes widows who have a settlement derived from their former husbands.—*Marden v. Boston*, 155 Mass. 359.

A married woman who had no settlement at the time of her marriage, and whose husband never had a settlement in this commonwealth, but resided in a certain city for thirteen years paying taxes for four years only, gained a settlement in that city under the statute.—*Stoughton v. Cambridge*, 165 Mass. 251.

A woman *non compos mentis* and not under guardianship cannot acquire a settlement by living in a city for five consecutive years, but retains her domicile of origin.—*Phillips v. Boston*, 183 Mass. 314.

A married woman whose husband has no settlement can gain a settlement by residing in a city in the commonwealth for five consecutive years, although, during the whole time, her husband has been absent, wandering from state to state.—*Bradford v. Worcester*, 184 Mass. 557.

Town Officers.—Seventh. A person who is chosen and actually serves one whole year or for such period as is included between two successive annual town elections as clerk, treasurer, selectman, overseer of the poor, assessor, constable, or collector of taxes in any place shall thereby acquire a settlement therein. *Ibid.*, cl. 7.

Ministers.—Eighth. A settled ordained minister of the gospel shall acquire a settlement in the place wherein he is settled as a minister. *Ibid.*, cl. 8.

Cases showing a settlement of a minister of the gospel, and the duties performed by him as proving such settlement.—*Leicester v. Fitchburg*, 7 Allen, 90; *Bellingham v. West Boylston*, 4 Cush. 553.

Apprentices.—Ninth. A minor who serves an apprenticeship to a lawful trade for four years in any place, and actually sets up such trade therein within one year after the expiration of said term, being then twenty-one years of age, and continues there to carry on the same for five years, other than as a hired journeyman, shall thereby acquire a settlement in such place. *Ibid.*, cl. 9.

Soldiers and Sailors.—Tenth. A person who was enlisted and mustered into the military or naval service of the United States, as a part of the quota of a city or town in this commonwealth, under any call of the President of the United States during the war of the rebellion or who was assigned as a part of the quota thereof after having been enlisted and mustered into said service, and who served for not less than one year, or died or became disabled from wounds or disease received or contracted while engaged in such service, or while a prisoner of the enemy, and his wife or widow and minor children, shall be deemed thereby to have acquired a settlement in such place; and any person who would otherwise be entitled to a settlement under this

clause, but who was not a part of the quota of any city or town, shall, if he served as a part of the quota of the commonwealth, be deemed to have acquired a settlement in the place where he actually resided at the time of his enlistment. But these provisions shall not apply to any person who was enlisted and received a bounty for such enlistment in more than one place unless the second enlistment was made after an honorable discharge from the first term of service, nor to any person who has been proved guilty of wilful desertion, or who left the service otherwise than by reason of disability or an honorable discharge. *Ibid.*, cl. 10.

A case in which the term "quota of any city or town" is explained.—*Bridgewater v. Plymouth*, 97 Mass. 382.

A written discharge issued to a soldier by the proper military authorities or a surgeon's certificate of disability held conclusive evidence in an action between two towns concerning his settlement as a pauper.—*Fitchburg v. Lunenburg*, 102 Mass. 358.

Under the statute of 1865, a soldier had a settlement who was credited on the quota of the town, although he was credited in excess of the number due from the town at the time.—*Wayland v. Ware*, 104 Mass. 46.

The statutes of 1865 and 1868 applied to drafted men as well as volunteers. The question of actual service held to be immaterial.—*Sheffield v. Otis*, 107 Mass. 282.

In order to constitute "wilful desertion" within the meaning of the statute of 1865, there must be both intentional absence and the intention not to return to the service.—*Hansom v. South Scituate*, 115 Mass. 336.

A case in which peculiar circumstances were held not to show wilful desertion.—*Milford v. Uxbridge*, 130 Mass. 107.

A man was mustered into the United States military service, became a deserter and afterwards surrendered himself under a proclamation of the President of the United States, and was honorably discharged. Held, on the issue, whether he had duly served one year, that the time he was absent as a deserter was to be excluded.—*Lunenburg v. Shirley*, 132 Mass. 498.

One who served and was part of the quota of the town for more than a year and was honorably discharged was held to have acquired a complete settlement for himself, wife, and minor children at the end of the year.—*Newburyport v. Worthington*, 132 Mass. 510.

A person who has acquired a settlement in one town by serving in the quota of such town more than one year may gain a settlement in another town by residing there for ten years and paying taxes for six years during that time.—*Boston v. Warwick*, 132 Mass. 519; *Granville v. Southampton*, 138 Mass. 256.

A settlement may be acquired by service in the United States navy as part of the quota of a town, although the person performing the service was at the time of enlistment a resident of another town.—*Brockton v. Uxbridge*, 138 Mass. 293.

A person assigned as part of the quota of a town under United States statute, July 4, 1864, although enlisted and mustered into the naval service several days before the beginning of the War of the Rebellion was "duly assigned" within the meaning of the statute.—*Boston v. Mt. Washington*, 139 Mass. 15.

It was held that a minor who was enlisted as a part of the quota of a town acquired thereby a settlement for himself, wife, and minor children the same as if he had been of full age when he enlisted.—*Fall River v. Taunton*, 150 Mass. 106.

Division of Towns.—Eleventh. Upon the division of a city or town, every person having a legal settlement therein, but being absent at the time of such division, and not having acquired a legal settlement else-

where, shall have his legal settlement in the city or town containing the last dwelling place or home which he had in the city or town so divided; and if a new city or town, composed of a part of one or more other cities or towns, is incorporated, every person legally settled in the places of which such new city or town is so composed, and who actually dwells and has his home within the bounds of such new city or town at the time of its incorporation, and any person duly qualified as provided in the tenth clause of this section, who, at the time of his enlistment, dwelt and had his home within such bounds, shall thereby acquire a legal settlement in such new place; but no person residing in that part of a place which upon such division is incorporated into a new city or town, and who then has no legal settlement therein, shall acquire any by force of such incorporation only; nor shall such incorporation prevent his acquiring a settlement therein within the time and by the means by which he would have gained it there if no such division had been made. *Ibid.*, cl. 11.

The pauper, an illegitimate child, must have the settlement of his mother at the time of his birth.—*Fitchburg v. Westminster*, 1 Pick. 144.

The pauper having gained a settlement on that part of the territory, which still remains within the limits of B., could not lose his old, or gain a new, settlement by removing to another part of the same town.—*New Braintree v. Boylston*, 24 Pick. 164.

Where parts of different towns, together with unincorporated territory, are incorporated into a district, a citizen having his home in such unincorporated territory gains a settlement in the district in the same manner as if such district had been wholly composed of territory previously incorporated.—*Sutton v. Orange*, 6 Met. 484.

In the transfer of the settlement of a pauper, it is immaterial whether it is derivative or acquired by the act of the pauper himself.—*Westborough v. Rehoboth*, 4 Cush. 185; *North Andover v. Groveland*, 1 Allen, 75.

The grandfather of a pauper acquired a settlement by two years' ownership of real estate and residence in a town, the pauper deriving his settlement from him; the effect of such a settlement was not changed by the removal of the father of the pauper to another part of the town, or to another town.—*Malden v. Melrose*, 125 Mass. 304.

Receiving Relief Defeats.—No person shall acquire a settlement, or be in process of acquiring a settlement, while receiving relief as a pauper, unless, within five years after the time of receiving such relief, he reimburses the cost thereof to the city or town furnishing the same. C. 80, S. 2.

A person does not acquire a settlement by residing in a town for ten years together and paying all taxes assessed upon him for five years within said time, if, during that time, the town has paid for his support while confined in its workhouse on conviction for a criminal offense.—*Worcester v. Auburn*, 4 Allen, 574.

A man being under no legal obligation to support his stepchild, the fact that such child receives aid from a town as a pauper on his application does not make the stepfather a pauper.—*Brookfield v. Warren*, 128 Mass. 287.

Support granted to a person as a pauper by the overseers of the poor of a town in which he has a settlement prevents his gaining one in another town in which he resides.—*Oakham v. Sutton*, 13 Met. 192.

A man does not acquire a settlement under the statute in a town where he owns a freehold, if, before he has lived therein three years, he is committed

to the state lunatic hospital, and is there supported as a pauper.—*Choate v. Rochester*, 13 Gray, 92.

An unmarried woman, over twenty-one years old, may acquire a settlement in a town by residing there five consecutive years without receiving relief as a pauper, although she had ceased to live there before the enactment of the statute of 1878.—*Dedham v. Milton*, 136 Mass. 424.

Non-Support of Family in Public Institutions.—No person who actually supports himself and his family shall be deemed to be a pauper by reason of the commitment of his wife, child, or other relation to an insane hospital or other institution of charity, reform, or correction by order of a court or magistrate, and of his inability to maintain such wife, child, or relation therein. *Ibid.*, S. 3.

The settlement of a pauper which was acquired by a ten years' residence and payment of taxes for five years was held not to have been defeated by the fact that his wife was, during the time, receiving support as a pauper from another town in which she resided, it not appearing that she was supported at his request or with his knowledge, or that he was ever applied to for payment of such expenses or was unable to pay them.—*Berkeley v. Taunton*, 19 Pick. 480.

The settlement will, however, be defeated if the wife of the pauper has been committed upon his complaint to the state lunatic hospital, and remains there at the expense of any town of the commonwealth, without his paying for her support during part of the time necessary to give him a settlement.—*Charlestown v. Groveland*, 15 Gray, 15.

Begun, not Interrupted.—No person who has begun to acquire a settlement by the laws in force at and before the time when this chapter takes effect, in any of the ways in which any period of time is prescribed for a residence, or for the continuance or succession of any other act, shall be prevented or delayed by the provisions hereof; but he shall acquire a settlement by a continuance or succession of the same residence or other act, in the same time and manner as if the former laws had continued in force. *Ibid.*, S. 4.

Continue Till Defeated or Lost.—Except as hereinafter provided, every legal settlement shall continue until it is defeated or lost by the acquisition of a new one within this commonwealth; and upon the acquisition of such new settlement all former settlements shall be defeated and lost. *Ibid.*, S. 5.

Absence from a town without a definite purpose at all events to return to it as a home will not interrupt the residence requisite to a settlement until a new domicile is acquired elsewhere.—*Worcester v. Wilbraham*, 13 Gray, 586.

Since the repeal of the Stat. of 1789, c. 14, by the Stat. of 1793, c. 34, a settlement in any town in this commonwealth is not lost by the acquisition of a settlement in another state while the statute of 1789 was in force.—*Wilbraham v. Sturbridge*, 6 Cush. 61.

A settlement gained in another state does not annul a previous settlement in a town within this state.—*Canton v. Bentley*, 11 Mass. 441.

The statute of 1881, relative to paupers, is prospective only in its operation.—*Worcester v. Barre*, 138 Mass. 101.

The word "support" is used in the same sense in Pub. Stat., c. 87, § 31, as in §§ 32, 33, 34 of that chapter; and a city having paid the price fixed in § 31, for the support of its paupers in a state lunatic hospital, is not liable for charges for clothing at the hospital and breakage of crockery.—*Gould v. Lawrence*, 160 Mass. 232.

Lost, when.— Any settlement which was not fully acquired subsequent to the first day of May in the year eighteen hundred and sixty is hereby defeated and lost, unless such settlement prevented a subsequent acquisition of settlement in the same place; but if a settlement acquired by marriage is so defeated, the former settlement of the wife, if not also so defeated, shall be revived. A person who is absent from the commonwealth for ten consecutive years shall lose his settlement. *Ibid.*, S. 6.

The husband of a pauper had a derivative settlement in a town from his grandfather, under the provisions of law in force prior to February 11, 1794. The father of the husband had also resided in the town for ten years and paid taxes there for five years while the husband was a minor. Neither the husband nor the pauper after his death had complied with the conditions necessary to acquire a settlement in their own right. *Held*, that the pauper had a legal settlement in the town.— *Adams v. Ipswich*, 116 Mass. 570.

The provision of the statute that all persons absent from the commonwealth for ten years in succession shall lose their settlement is not retroactive.— *Lawrence v. Methuen*, 187 Mass. 592.

Returns to State Board of Charity.— They shall annually in April, for the year ending on the last day of March, return to the state board of charity the number of paupers fully supported, the persons relieved and partially supported, and the travelers and vagrants lodged at the expense of their town; and on or before the tenth day of January or July in each year make returns relative to all minor children over the age of four years, who are supported at the expense of such town, on the first day of said month, and the cost thereof, in such form and with such information as may be prescribed by the state board. C. 81, SS. 40, 43.

In the year 1905, and every tenth year thereafter, the return of the overseers of the poor shall contain true and correct answers to the inquiries expressed in the statute; and they shall at the same time make correct returns of the name, age, and sex, of every child in their town under fourteen years of age, who is supported at the public charge. *Ibid.*, S. 41.

Smallpox Patients.— No town officer shall send to the state hospital any person who is infected with smallpox or other disease dangerous to the public health, or except as provided in section 10, any other sick person whose health would be endangered by removal; but all such persons who are liable to be maintained by the commonwealth shall be supported during their sickness by the town in which they are taken sick, and notice thereof shall be given to the state board of charity. Such notice in the case of sick persons whose health would be endangered by such removal shall be signed by the overseers of the poor or by persons appointed by them by special vote. C. 85, S. 14.

State Paupers.— A town may furnish aid to poor persons found therein having no lawful settlements within the commonwealth, if the overseers of the poor consider it for the public interest; but, except in

cases under the provisions of section 4 of chapter 85 (concerning minors) not for a greater amount than two dollars a week for each family during the months of May to September inclusive, or three dollars a week during other months; and the overseers shall in every case give immediate notice in writing to the state board of charity.

A detailed statement of expenses so incurred shall be rendered, and after approval by the state board, such expenses shall be paid by the commonwealth. C. 81, S. 21.

Strangers, Relief of.—The overseers of the poor, in their respective places, shall provide for the immediate comfort and relief of all persons residing or found therein, having lawful settlements in other places, when they fall into distress and stand in need of immediate relief, and until they are removed to the places of their lawful settlements. The expense thereof and of their removal, or burial in case of their decease, may be recovered in an action of contract against the place liable therefor, if commenced within two years after the cause of action arises, but nothing shall be recovered for relief furnished more than three months prior to notice thereof given to the defendant. *Ibid.* S. 17.

If a town voluntarily maintains a pauper having a settlement in another town no action will lie to recover compensation therefor, unless it is given by Stat. 1793, c. 59, or is founded on express promise.—*Dalton v. Hinsdale*, 6 Mass. 501.

To entitle a town, which has supported a pauper belonging to another town, to recover an indemnity it is not necessary that the pauper be actually resident in the town at the time of giving notice to the town in which he has a legal settlement.—*Marlborough v. Rutland*, 11 Mass. 483.

Where overseers of the poor give relief to the wife of one who has a legal settlement in another town an action lies for the town giving the relief against the husband, as well as against the town where he is settled.—*Hanover v. Turner*, 14 Mass. 227.

Where a pauper for whom provision had been made in one town voluntarily went to an adjoining town and there expenses were incurred for her support, and it was well known that provision had been made for her in the former town and that she could have walked back if she had wished to do so, it was held that the adjoining town could not recover for the expenses so incurred.—*New Salem v. Wendell*, 2 Pick. 341.

Notice must be given within three months after relief is given.—*East Sudbury v. Sudbury*, 12 Pick. 1.

Where an individual notified the overseers that he was supporting a pauper and should look to the town for reimbursement, and the overseers thereupon gave notice to the town of the pauper's settlement, it was held that the first town might maintain an action against the other for the pauper's support, although it had not paid the individual.—*Westfield v. Southwick*, 17 Pick. 68.

The fact that a sufficient provision has been made for the support of a pauper by his father's will does not debar a town that has furnished him necessary relief from recovering the expense thereof from the town of his settlement.—*Groveland v. Medford*, 1 Allen, 23.

Likewise in a case where a deceased pauper was entitled to soldier's relief which had not been afforded him.—*Crossman v. Savings Institution*, 160 Mass. 503.

If the plaintiffs, after giving their first notice, had prosecuted their action to final judgment the defendants would have been barred from contesting the pauper's settlement.—*Wenham v. Essex*, 103 Mass. 119.

A case in which the court defines what constitutes "need of immediate relief."—*Templeton v. Winchendon*, 138 Mass. 109.

A town furnishing relief to a pauper need not wait until it has stopped giving such relief before bringing suit to recover the expenses thereof.—*Worcester v. Northborough*, 140 Mass. 402.

Nor does a town which has furnished such relief need to wait until it is determined whether the pauper will acquire a settlement by reimbursing the cost of such relief within five years.—*Dedham v. Milton*, 136 Mass. 424.

The action provided for under the statute must be brought within two years from the time of giving the notice.—*Reading v. Malden*, 141 Mass. 580.

A city may recover of a town the full amount paid for the support of a pauper in the state lunatic hospital. The cases reviewed.—*Northampton v. Plainfield*, 164 Mass. 506; *Amherst v. Shelburne*, 11 Gray, 107.

Support and Burial.—The overseers of the poor of each place shall also relieve and support and may employ all poor persons residing or found therein, having no lawful settlements within this commonwealth, until their removal to the state hospital, and if they die shall decently bury them. They shall also decently bury all deceased persons who, although without means of support while living did not apply for public relief, and all unknown persons found dead. C. 81, S. 20; C. 24, S. 21.

Work for Food and Lodging.—The overseers of the poor and the officer in charge of premises provided by a town for the purpose of supplying food or lodging may require any person applying for and receiving food or lodging to perform a reasonable amount of labor in return therefor, and may detain him for not more than twenty-four hours after the time of such application until the labor required of him as aforesaid has been performed. C. 81, S. 22.

Removals out of State.—A person actually chargeable as a pauper to a town in which he has a settlement, who subsequently acquires a settlement in a place out of this commonwealth, may be removed thereto by the overseers of the poor of such town by a written order directed to any person therein designated. *Ibid.*, S. 30.

Removal of Paupers.—The overseers of a place to which a person has actually become chargeable may give written notice thereof to, and request his removal by, the overseers of the place where his settlement is supposed to be, who may, by an order in writing, directed to a person therein designated, cause such removal to be made. *Ibid.*, S. 32.

Cases in which the court approves as sufficient notices for removal of a pauper.—*Marshpee v. Edgerton*, 23 Pick. 156; *Northfield v. Taunton*, 4 Met. 433; *Lynn v. Newburyport*, 5 Allen, 545; *Granville v. Southampton*, 138 Mass. 256.

The removal contemplated by the statute is that of a living person.—*Webster v. Uxbridge*, 13 Met. 198.

Where the town authorities have provided supplies for distribution among those out of the almshouses who need relief upon orders of overseers of the poor, and have given them notice thereof, the latter have no authority to contract debts in behalf of the town for the support of the poor.—*Ireland v. Newburyport*, 8 Allen, 73.

Overseers of the poor of a town answering a notice from overseers of another town for removal of a pauper need not refer expressly to the notice;

the assertion in the answer that the pauper has no legal settlement in the town is a sufficient statement of their objections to removal.—*Wenham v. Essex*, 103 Mass. 117.

Where overseers neglect to return a written answer to a notice from another town their town is barred from contesting the question of settlement.—*Shelburne v. Buckland*, 124 Mass. 117; *Topsham v. Harpswell*, 1 Mass. 518.

A notice which stated that a mother and three children had applied for relief held insufficient, there being five children.—*Carver v. Taunton*, 152 Mass. 484.

In case of misnomer a notice was held ineffectual, "Mary R." not being the proper designation of "Mary E. P."—*Boston v. Acton*, 167 Mass. 579.

Proceedings for Removal.—If, within one month after receiving such notice, the overseers of the latter place do not cause such removal to be made or a statement in writing signed by one or more of them of their objections to the removal to be transmitted to the overseers requesting such removal, the overseers who requested the removal may, by a written order directed to a person therein designated, cause the pauper to be removed to the place of his supposed settlement; and the overseers thereof shall receive and provide for him; and such place shall be liable in an action to the place incurring the same for the expenses of his support and removal, and shall be barred from contesting the question of settlement in such action unless the settlement is denied in said statement. *Ibid.*, S. 33.

The notice and statement mentioned in the two preceding sections may be sent by mail; and if directed to the overseers of the poor of the place intended to be notified or answered, postage prepaid, shall be a sufficient notice or answer, and shall be considered as delivered to the overseers to whom it is directed at the time when it is received in the post-office of the place to which it is directed and in which they reside. *Ibid.*, S. 34.

Where a mistake was made in the first answer and corrected in a second answer by overseers to a notice for removal, it was held that the two answers taken together were sufficient as a response to the notice from the time second answer was received. "Sally" or "Sarah" held as sufficient.—*Shelburne v. Rochester*, 1 Pick. 470.

The answer must be signed by one of the overseers. When a defect in the answer is not waived.—*Petersham v. Coleraine*, 9 Allen, 91.

Notwithstanding the fact that the overseers of a town neglected to reply to a letter of notice within two months after its receipt, it was held that the town was not estopped to deny that the person to whom supplies were furnished was not in need of relief.—*New Bedford v. Hingham*, 117 Mass. 445.

Facts which do not constitute an estoppel.—*South Scituate v. Stoughton*, 145 Mass. 535.

Cases in which a failure to return a written answer within the statutory period was held a bar to contesting the question of settlement in an action for expenses of support.—*Shelburne v. Buckland*, 124 Mass. 117; *Easton v. Wareham*, 131 Mass. 10.

An answer of a town to a notice from another town, demanding the removal of a pauper, which refuses the demand on the ground that the pauper's settlement is in the other town, waives the right to object to the sufficiency of the notice.—*Brookfield v. West Brookfield*, 186 Mass. 524.

Town Liable to Individuals.— Every city and town shall be liable for any expense necessarily incurred for the relief of a pauper therein by any person who is not liable by law for his support, after notice and request made to one or more of the overseers thereof, and until provision is made by them. C. 81, S. 31.

A town in which a prison is situate is *held* to support a pauper confined in prison for debt, whether he has a legal settlement in any other place or not, after due application to the overseers.—*Cargill v. Wiscasset*, 2 Mass. 547.

The notice and request need not be in writing, and an action for reimbursement is not limited to the period of two years after the notice is given.—*Watson v. Cambridge*, 15 Mass. 286.

Where the guardian of a pauper gave notice to the overseers of a town that his ward was likely to become a public charge when his property became exhausted, and after the ward's death gave notice and made request to be reimbursed for expenses incurred by him, it was *held* that the town was liable for such expenses.—*Fiske v. Lincoln*, 19 Pick. 473.

A person not an inhabitant of the town where a pauper falls into distress may recover of such town necessary expenses incurred by him for the pauper's relief after due notice and request to the overseers.—*Underwood v. Scituate*, 7 Met. 214.

The notice and request are conditions precedent and must be an intelligible call on the overseers to take charge of the pauper, and must be made by the individual himself or by his agent or messenger.—*Williams v. Braintree*, 6 Cush. 399.

Peculiar state of facts under which the claims of individuals for the support of paupers were denied.—*Shearer v. Shelburne*, 10 Cush. 3; *Hawes v. Hanson*, 9 Allen, 134.

Cases in which the claims of physicians for services were denied on the ground that the town had made other provision for the relief of the paupers to whom the services were rendered.—*Wing v. Chesterfield*, 116 Mass. 353; *Phelps v. Westford*, 124 Mass. 286.

A notice and request to one member of the board of overseers *held* sufficient.—*Rogers v. Newbury*, 105 Mass. 533.

No action against a town can be maintained except upon evidence of an express and formal notice to the overseers and a distinct request to them that the pauper be provided for.—*O'Keefe v. Northampton*, 145 Mass. 115.

Workhouse, Profits and Earnings.— The profits and earnings of inmates of a workhouse or almshouse shall, with the stock remaining on hand, be disposed of as the overseers of the poor of the several towns shall think proper, either to the use of their towns, of the persons committed, or of the families of such persons. C. 30, S. 19.

An action lies by one town against another for money paid for the relief of a person having a settlement in the defendant town, for immediate relief, although at the time the pauper had money on deposit in a savings bank.—*Palmer v. Hampden*, 182 Mass. 511.

A pauper cannot recover from a city or town for services rendered by him as an inmate of its almshouse.—*Taunton v. Talbot*, 186 Mass. 341.

PAUPERS.

See "Overseers of the Poor."

PAWNBROKERS.

See "Selectmen."

POLICE.

See "Selectmen."

POUNDS; POUND-KEEPER.

Every town is required to maintain sufficient pounds, and to appoint annually a keeper for each pound therein. The duties of pound-keeper are to keep and care for all stray beasts which are placed in the pound, and to deliver beasts so impounded to the owner upon the payment to him of his fees, the expense of keeping the beasts, and the fees of the field driver, which when received he is required to pay to that officer. For further particulars as to his duties the reader is referred to the statutes prescribing the same. C. 33, SS. 23-40.

REGISTRARS OF VOTERS.

Appointment.—In every town having three hundred registered voters, as provided in the following section, there shall be a board of registrars of voters consisting of the city or town-clerk and three other persons who shall be appointed in a town, by a writing signed by the selectmen and filed with the town-clerk. When a board of registrars is first appointed, the registrars shall be appointed in March or April for terms respectively of one, two, and three years, beginning with the first day of May next ensuing. In March or April in every year succeeding the original appointment, one registrar shall be appointed for the term of three years, beginning with the first day of May next ensuing. C. 11, S. 25.

Small Towns, Registrars in.—In every town having less than three hundred registered voters registered therein for the annual state election, the selectmen and the town-clerk shall constitute a board of registrars of voters; but when three hundred voters shall be so registered, a board of registrars shall, in the succeeding year, be appointed, as provided in the preceding section, and shall continue to perform the duties of registration therein until, for three successive years, the number of registered voters shall be less than three hundred, whereupon, on the first day of May following the annual state election in such third year, such board shall cease to exist and thereafter the selectmen and town-clerk shall constitute a board of registrars of voters. *Ibid.*, S. 26.

Political Representation.—In the original and in each succeeding appointment and in the filling of vacancies, registrars of voters shall be so appointed that the members of the board shall, as equally as may be, represent the two leading political parties at the preceding state election, and in no case shall an appointment be so made as to cause a board to consist of more than two members who, including the city or town-clerk, are of the same political party.

If, upon written complaint to the selectmen, it shall appear, after notice and hearing, that the town-clerk, when a member of the board of registrars, and two registrars are of the same political party, the selectmen, shall remove from office the one of such two registrars hav-

ing the shorter term. If, upon like proceedings, it shall appear, after notice and hearing, that a registrar of voters, other than the town-clerk, has ceased to act with the political party which he was appointed to represent, the selectmen shall remove him from office. *Ibid.*, SS. 27, 28.

The only test as to the appointment of registrars of voters from the two political parties is that the registrar shall act with that one which he was appointed to represent. He need not be recognized as in regular standing by, or in all things act with, the predominant faction of that party.—*Jaquith v. Wellesley*, 171 Mass. 138.

Vacancies, Temporary, Filled.—If a member of the board of registrars shall be disabled by illness or other cause from performing the duties of his office, or shall, at the time of any meeting of said board, be absent from the town, the selectmen may, upon the request in writing of a majority of the remaining members of the board, appoint in writing some person to fill such temporary vacancy, who shall be of the same political party as the member whose position he is appointed to fill. Such temporary registrar shall perform the duties and be subject to the requirements and penalties provided by law for a registrar of voters. *Ibid.*, S. 29.

Oath; Compensation.—The registrars and assistant registrars herein-after provided for shall, before entering upon their official duties, each take and subscribe an oath faithfully to perform the same. They shall receive such compensation for their services as the selectmen may determine; but such compensation shall not be regulated by the number of names registered by them, and a reduction of compensation shall apply only to registrars appointed thereafter. The selectmen shall provide office room for the registrars, and such aid as they may need. The town-clerk, when a member of a board of registrars, shall act as clerk thereof, shall keep a full and accurate record of its proceedings, and shall cause such notices as the registrars may require to be properly served or posted.

Each registrar shall, unless sooner removed, hold his office for the term for which he is appointed and until his successor is appointed and qualified. *Ibid.*, SS. 30, 31.

Not Hold Other Office.—No person shall be appointed a registrar or assistant registrar who is not a voter of the town for which he is appointed, who holds an office by election or appointment under the government of the United States or of the commonwealth, except as a justice of the peace, notary public, or an officer of the state militia, or who holds an office in the town for which he is appointed either by election or by direct appointment of the selectmen. The acceptance by a registrar or assistant registrar of an office which he is prohibited from holding shall vacate his office as registrar or assistant registrar. *Ibid.*, S. 34.

Place of Registration.— A person qualified to vote in a town divided into voting precincts shall be registered and be entitled to vote in the voting precinct in which he resided on the first day of May preceding the election, or, if he became an inhabitant of such town after such first day of May, in the voting precinct in which he first became a resident. *Ibid.*, S. 14.

Posting Copies of Laws.— In every place where voters are registered, the registrars shall post in a conspicuous place a copy of sections 389 and 390, printed on white paper with black ink, in type not less than one-quarter of an inch wide. *Ibid.*, S. 20.

Sessions for Registration.— The registrars shall hold such day and such evening sessions as the town by a by-law shall prescribe and such other sessions as they may deem necessary. The statute prescribes certain times and the hours and length of sessions to be held in towns, the number of days prior to the annual meeting and special meetings, and the annual state election when the sessions shall be held. The sessions shall be open to the public and the records shall at suitable times be open to public inspection.

Supervisors.— Upon request of ten qualified voters of a town the governor, with the advice and consent of the council, appoints for a term of one year two supervisors of registration for each place of registration in the town, one from each of the two leading political parties. The supervisors are required to attend all sessions held for registration and may attach to any book or papers there used any statement touching the truth or fairness of the proceedings which they may deem proper. C. 11, SS. 36, 39, 55, 59.

Notices of Sessions.— They shall post or publish notices stating the places and hours for holding all sessions, the final sessions preceding any election, and that after ten o'clock in the evening of the last day fixed for registration, they will not, until after the next election, add any name to the registers except the names of voters examined as to their qualifications between the preceding thirtieth day of April and the close of registration. *Ibid.*, S. 42.

Illegal or Incorrect Registration.— The registrars are required upon complaint in writing under oath by any registered voter that any person named has been illegally or incorrectly registered, to examine into such complaint; and, after notice and a summons to the person complained of to appear before them, to enter in the register a statement of their determination upon the facts, and make all necessary corrections of the register in accordance with such determination. *Ibid.*, SS. 52, 53.

Action of One Registrar.— Any registrar may, at a place appointed for registration, on the days and during the hours designated for the purpose, receive applications for registration and examine applicants

and witnesses under oath; but all doings of one registrar shall be subject to the revision and acceptance of the board. *Ibid.*, S. 40.

General Register.—They shall keep in general registers records of all persons, male and female, registered as qualified to vote in the town. They shall enter therein the name of every such voter written in full, or instead thereof the surname and first Christian name or that name by which he is generally known written in full, and the initial of every other name which he may have, and also his age, place of birth, and residence on the preceding first day of May, or at the time of becoming an inhabitant of the town after said day, the date of his registration and his residence at such date, his occupation and the place thereof, the name and location of the court which has issued to him letters of naturalization and the date thereof, if he is a naturalized citizen, and any other particulars necessary fully to identify him. The form of the general register is given in the statute, and the blank books required are provided by the secretary of state. *Ibid.*, S. 43.

An action will lie against the selectmen of a town by a person whose name is wrongfully erased from the register of votes.—*Larned v. Wheeler*, 140 Mass. 390.

Annual Register.—The registrars are required after the first day of May to prepare an annual register containing the names of all qualified voters in the town for the current year beginning with that date. The register should contain every name in the list of persons assessed for a poll-tax for the current year as transmitted to them by the assessors, and likewise the name of every woman voter whose name is in the list transmitted to the registrars as provided in section 16. They are required to satisfy themselves as to the identity of all persons whose names are entered upon the register, and annually, before the first day of May, to transmit to the assessors a list of the women whose names are upon the register, with their residences as they appear on the register of the preceding year. *Ibid.*, S. 44.

Application in Person; Examination.—Every person, male or female, whose name has not been entered in the annual register in accordance with the preceding section must, in order to be registered as a voter, apply in person for registration and prove that he is qualified to register. *Ibid.*, S. 45.

Every male applicant for registration whose name has not been transmitted to the registrars as provided in section 16 shall present a tax-bill or notice from the collector of taxes, or a certificate from the assessors showing that he was assessed as a resident of the city or town on the preceding first day of May, or a certificate that he became a resident therein at least six months preceding the election at which he

claims the right to vote, and the same shall be *prima facie* evidence of his residence. *Ibid.*, S. 46.

The statements of a voter when applying for registration need not be under oath.—*Lombard v. Oliver*, 7 Allen, 155.

Manner of Registering.—The registrars shall examine under oath an applicant for registration relative to his qualifications as a voter, and shall, unless he is prevented by physical disability, or unless he had the right to vote on the first day of May in the year eighteen hundred and fifty-seven, require him to write his name in the general register and to read in such manner as to show that he is neither prompted nor reciting from memory. Registrars shall be provided by the secretary of the commonwealth with a copy of the constitution of the commonwealth printed on uniform pasteboard slips, each containing five lines of said constitution printed in double small pica type. The registrars shall place said slips in the box provided by the secretary of the commonwealth, which shall be so constructed as to conceal them from view. Each applicant shall be required to draw one of said slips from the box and read aloud the five lines printed thereon, in full view and hearing of the registrars. Each slip shall be returned to the box immediately after the test is finished, and the contents of the box shall be shaken up by a registrar before another drawing is made. No person failing to read the constitution as printed on the slip thus drawn shall be registered as a voter. The registrars shall keep said slips in said box at all times. The secretary of the commonwealth shall upon request provide new slips to replace those worn out or lost. C. 11, S. 47.

Naturalized Citizens.—If an applicant for registration is a naturalized citizen, the registrars shall require him to produce for inspection his papers of naturalization, and to make oath that he is the identical person named therein, and shall, if satisfied that the applicant has been legally naturalized, make upon his papers a memorandum of the date of such inspection. *Ibid.*, S. 48.

Minors.—If, upon examination, the registrars are satisfied that an applicant for registration has all the qualifications of a voter, except that of age, and that he will on or before the day of the next election or town meeting, attain full age, they shall place his name upon the registers. *Ibid.*, S. 49.

Rejection, Notice of.—If the registrars decline to register the name of a person examined for registration and reported to them therefor by a registrar, they shall notify him of their refusal, and give him a reasonable opportunity to be heard by them upon his application. They shall upon the rejection of an applicant forthwith inform him of such rejection. *Ibid.*, S. 50.

Revision and Correction.—The registrars shall, from time to time, revise and correct the general register and the current annual register in accordance with any facts which may be presented to them. They shall strike therefrom the name of every deceased person which has been transmitted to them by the city or town clerk or the registrar of deaths in accordance with section 23; but after the name of a voter has been placed upon the current annual register, they shall not change the place of residence as given thereon, nor, unless the voter has deceased, strike such name therefrom, until they have sent him a notice of their intention so to do and that he may be heard on a certain day named therein. *Ibid.*, S. 51.

Post Voting Lists; Additional Names.—They shall, at least twenty days before the annual city or town election, and in every place except Boston, at least thirty days before the annual state election, cause copies of the voting lists prepared in accordance with the two preceding sections to be posted in their principal office and in one or more other public places in the town, and in each precinct therein.

After the voting lists have been posted, registrars shall, within forty-eight hours after a new name has been added to the annual register, cause it to be added to the lists posted in their principal office. If a town shall authorize the registrars to publish the names added to the register, they may, instead of posting them, cause all additional names to be printed in a newspaper published in the town, if any, otherwise in a newspaper published in the county in which such town is situated. *Ibid.*, SS. 62, 63.

Nomination Papers, Certification of Voters.—Every nomination paper shall be submitted to the registrars of the town in which the signers appear to be voters, and such registrars shall forthwith certify thereon the number of signatures which are names of voters in the town and in the district or division for which the nomination is made. They need not certify a greater number of names than are required to make a nomination with one-fifth of such number added thereto. *Ibid.*, S. 144.

The signing by a third person of the name of a voter to a nomination paper, not in his presence and at his request, and the subsequent filing of such paper, constitute the offenses of falsely making and falsely filing a nomination paper.—*Commonwealth v. Connelly*, 163 Mass. 539.

Notice of Errors to Assessors.—The registrars shall promptly transmit to the assessors of the city or town notice of every error which they shall discover in the name or residence of a person assessed therein. *Ibid.*, S. 54.

Omission or Error, Certificates of.—Registrars shall, on the day of an election, give to a registered voter whose name has been omitted from the voting list, or in whose name or residence, as placed on the

voting list, a clerical error has been made, a certificate of his name and residence, as stated on the annual register, signed by the registrars or a majority of them. C. 11, S. 64.

Duplicate Lists.—They shall, before every election and meeting in a town at which voting lists may be required to be used, prepare voting lists for each voting precinct or town in which such election or meeting is to be held, containing the names and residences of all persons qualified to vote therein, as the same appear upon the annual register, and they shall seasonably transmit the same to the election officers in every such precinct, or town. Such voting lists shall be in duplicate for all elections and meetings at which duplicate lists are required to be used. *Ibid.*, S. 65.

The requirements prescribed for the registration of voters cannot be regarded as adding a qualification to those set out in the constitution, but are only a reasonable regulation of the mode of exercising the right of voting.—*Capen v. Foster*, 12 Pick. 485.

Recount of Ballots.—Under certain conditions, specified in the statute, the registrars of voters are required to open the envelopes containing the ballots cast at an election in any town, recount the ballots therein contained, and determine the questions raised as to the legality of the same; but upon a recount of votes for town officers in a town in which the selectmen are members of the board of registrars, the recount shall be made by the moderator, who shall have all the powers and perform all the duties conferred or imposed by this section upon registrars of voters. *Ibid.*, S. 267.

A statement that the signers have reason to believe that the returns of the ward officers are erroneous in regard to certain officers mentioned is sufficient.—*Opinion of Justices*, 136 Mass. 583.

At the trial of an indictment for altering a ballot cast at an annual state election, the ballot is admissible in evidence.—*Commonwealth v. Ryan*, 157 Mass. 403.

The language of the statute, "the records so amended shall stand as the true records of the election," does not take away the jurisdiction of this court to correct errors of law appearing upon the face of the record.—*Flanders v. Roberts*, 182 Mass. 524.

Returns of Assessed Polls.—They shall forthwith, after the final day for registration before an annual state, city, or town election, certify to the secretary of the commonwealth the number of assessed polls, the number of registered male and female voters in the city or town, and in each ward and precinct therein, and the number of persons who by law are entitled to vote for a part only of the whole number of officers to be chosen at a state election in such city or town and in each ward and precinct therein, with the titles of the officers for whom such persons are entitled to vote. *Ibid.*, S. 66.

Voting List for Caucuses.—When a caucus is called the registrars shall, on request of the person designated to call the caucus to order, furnish him for use in the caucus a certified copy of the voting list of

the town, or of the ward of the city for which the caucus is to be held, as last published, adding thereto the names of voters registered since such publication. *Ibid.*, S. 67.

Voting Lists for Elections.— Registrars shall, from the names entered in the annual register of voters, prepare voting lists for use at the several elections to be held therein. In such voting lists, they shall place the names of all voters entered on the annual register, and no others, and opposite to the name of each, his residence on the preceding first day of May or at the time of his becoming an inhabitant of such place after said day. They shall enter the names of women voters in separate columns or lists. If a town is divided into voting precincts, they shall prepare the same by precincts, in alphabetical order, or by streets.

They shall place at the end of the voting lists of each voting precinct or town to be used at a state election, under a proper heading, the names of all persons who, by changes in town boundaries, or by removal from the town, are not entitled to vote for the whole number of officers to be chosen. *Ibid.*, SS. 60, 61.

ROAD COMMISSIONERS.

Towns are required to elect one or more surveyors of highways, or road commissioners. The duties of these officers are substantially the same with the qualification that the road commissioners act in general independently of the selectmen, whereas the surveyors of highways perform their duties to some extent under the direction of the selectmen.

Election.— A road commissioner may be elected at the annual town meeting, to serve during the year. C. 11, S. 334.

A town may vote to elect three road commissioners in the following manner: It shall at the annual meeting when such vote is passed or at the next annual meeting elect one for the term of one year, one for the term of two years, and one for the term of three years; and at each annual meeting thereafter it shall elect one for the term of three years. A town which has voted to elect said officers as herein provided may at an annual meeting rescind such action and thereupon the office of road commissioner shall be abolished. *Ibid.*, S. 341.

Official Oath; Term.— The road commissioners before entering upon their official duties shall be sworn to the faithful performance thereof. The oath may be administered by the moderator in open meeting or by the town-clerk.

Their official term begins on the day after their election, or as soon thereafter as they are qualified, and continues for the term fixed by law, or until others are chosen and qualified in their stead. *Ibid.*, SS. 346, 347.

Duties and Powers.—If road commissioners are chosen in a town, they shall exclusively have the powers, perform the duties and be subject to the liabilities and penalties of selectmen and surveyors of highways relative to streets, ways, bridges, monuments at the termini and angles of streets, guide posts, sidewalks and shade trees, and, if sewer commissioners are not chosen, relative to sewers and drains. C. 25, S. 83.

If a natural water-course has its source, body, and outlet in a highway, the surveyor of highways may, for the purpose of repairing the highway, change the direction of the water and convey it in an open ditch along the highway. The abutting landowner, although he owns the fee to the center of the highway, cannot maintain a bill in equity against the surveyor and the town to abate the nuisance and for damages; his remedy is by Pub. Stat., c. 52, §§ 15, 16.—*Nealley v. Bradford*, 145 Mass. 561.

Road commissioners are public officers for whose acts a town is not responsible. A town not having accepted Stat. 1871, c. 158, or Pub. Stat., c. 27, §§ 74–77, elected “road commissioners,” who, while performing the duties of that office, committed a trespass. *Held*, in an action against the town therefor that they were road commissioners *de facto*, the validity of whose election could not be collaterally impeached.—*Clark v. Easton*, 146 Mass. 43.

An action of tort against a town for personal injuries caused by alleged negligence of road commissioners in making and repairing a town-way under Pub. Stat., c. 52, § 3. *Held*, that the action could not be maintained, as the commissioners acted as public officers and not as servants of the town.—*McManus v. Weston*, 164 Mass. 263.

Ways, Money to Repair, how Expended.—Money appropriated for making and repairing ways shall be carefully and judiciously expended by the road commissioners; or, if the town is divided into highway districts, by the surveyors of highways, each in his own district. C. 51, S. 3.

The Stat. 1871, c. 298, abolished all highway taxes.—*Westhampton v. Searle*, 127 Mass. 503.

SCHOOLS.

Established; Subjects Taught.—Every town shall maintain, for at least thirty-two weeks in each year, a sufficient number of schools for the instruction of all the children who may legally attend a public school therein, except that in towns whose assessed valuation is less than two hundred thousand dollars, the required period may, with the consent of the board of education, be reduced to twenty-eight weeks. Such schools shall be taught by teachers of competent ability and good morals, and shall give instruction in orthography, reading, writing, the English language and grammar, geography, arithmetic, drawing, the history of the United States, physiology and hygiene, and good behavior. In each of the subjects of physiology and hygiene special instruction as to the effects of alcoholic drinks and of stimulants and narcotics on the human system shall be taught as a regular branch of study to all pupils in all schools which are supported wholly or partly by public money, except schools which are maintained solely for instruction in particular branches.

Bookkeeping, algebra, geometry, one or more foreign languages, the

elements of the natural sciences, kindergarten training, manual training, agriculture, sewing, cooking, vocal music, physical training, civil government, ethics, and such other subjects as the school committee consider expedient may be taught in the public schools. C. 42, S. 1.

The power of towns to raise money for the support of town schools is not limited to the amount necessary to support the schools provided for in Rev. Stat. c. 23, §§ 1-5, 60; but they may vote and grant money for other town schools for instruction in branches of knowledge which the statutes do not require to be taught in such schools.—*Cushing v. Newburyport*, 10 Met. 508.

Attendance Regulated.—Every child between seven and fourteen years of age, and every child under sixteen years of age who cannot read at sight and write legibly simple sentences in the English language, shall attend some public day school in the city or town in which he resides during the entire time the public day schools are in session, subject to such exceptions as to children, places of attendance, and schools as are provided for in this chapter. The attendance of a child upon a public school as above provided is not required if he has been instructed for a like period of time in the branches of learning required by law to be taught in the public schools, or if he has already acquired such branches, or if his physical or mental condition renders such attendance inexpedient or impracticable.

Every person having control of a child as above described is required to cause him to attend school and if he fails to do so is liable to be punished by a fine of not more than twenty dollars. C. 44, S. 1.

“Of legal school age,” defined to include all members of the public schools under twenty-one years of age in 1880.—*Needham v. Wellesley*, 139 Mass. 372.

If the school committee has not approved of a particular school or has expressly refused to approve it, the person having control of a child, if he sends it to that school, must take the responsibility of being able to prove that he has been sufficiently and properly instructed there.—*Commonwealth v. Roberts*, 159 Mass. 372.

A recent amendment of the law which permits a town to recover from the parents or guardian for the tuition of a child attending school in a town other than that of its legal residence, encourages the practice of sending children to such towns as are considered to furnish superior opportunities for instruction. *Ibid.*, S. 4.

COMMITTEES.

Election.—The town shall at its annual meeting or at a meeting held in the same month in which the annual meeting occurs, choose members of the school committee, which committee shall consist of any number of persons divisible by three which the town has decided to elect, one-third thereof to be elected annually and to continue in office three years. If a town fails or neglects to choose such committee, an election at a subsequent meeting shall be valid, and the town may

at its annual meeting, vote to increase or diminish the number of its school committee; and any town in which ballots for town officers are provided at the expense of the town, may vote so to change the number of its school committee at a meeting other than the annual meeting called for the purpose, and held thirty days at least before the annual meeting at which such change becomes operative; such increase shall be made by adding one or more to each class to hold office according to the tenure of the class to which they are severally chosen. Such diminution shall be made by choosing annually such number as will in three years effect it, and a vote to diminish shall remain in force until the diminution has been accomplished.

Women are eligible as school committee. C. 11, S. 334.

The general school committee of the city of Boston have power to make provision for the instruction of colored children in separate schools established exclusively for them and to prohibit their attendance upon the other schools.—*Roberts v. Boston*, 5 Cush. 198.

The power of fixing times for vacations and holidays is not in the inhabitants of the district, nor in the prudential committee, but in the general school committee of the town.—*School District v. Loud*, 12 Gray, 61.

A school committee had authority to print an address by them to the people of the city regarding an occurrence in the public schools and refer to the same in their annual report as a part thereof.—*Wilson v. Cambridge*, 101 Mass. 142.

The expulsion of a pupil by part of a school committee, unanimously ratified afterwards by the full committee, is not an irregularity which gives the pupil a right of action against the town.—*Hodgkins v. Rockport*, 105 Mass. 475.

Duties; Powers.—The school committee is required to appoint a secretary who shall keep a permanent record-book in which all its votes, orders, and proceedings shall be recorded. C. 42, S. 26.

The committee has general charge and superintendence of all the public schools, industrial schools, evening schools, and evening high schools, and may determine the number of weeks in each year and the hours during which such evening schools shall be kept and may make regulations as to the attendance therein. *Ibid.*, S. 27.

The committee selects and contracts with the teachers of the public schools; may dismiss any teacher from employment, and may elect a teacher who has served as such in the public schools of its town for not less than one year to serve as such at the pleasure of the committee. *Ibid.*, SS. 28, 31, 32.

The power given to school committees to select and contract with teachers for town and district schools includes the power to fix their compensation and to bind the town to pay the same.—*Batchelder v. Salem*, 4 Cush. 599; *Charlestown v. Gardner*, 98 Mass. 587.

The decision of a school committee as to a person's qualifications for teaching is conclusive.—*School District v. Mowry*, 9 Allen, 96.

The school committee are required to keep a record of their votes, orders, and proceedings.—*Russell v. Lynnfield*, 116 Mass. 367.

Facts showing a reasonable regulation made by a school committee concerning the time within which children under the age of seven years must enter school.—*Alvord v. Chester*, 180 Mass. 20.

Select Books, Prescribe Studies.— The school committee shall direct what books shall be used in the public schools, and prescribe, as far as practicable, a course of studies and exercises to be pursued therein. *Ibid.*, S. 34.

Visit Schools.— If there is no superintendent, the school committee or one or more of its members, shall visit all the public schools in its town on a day during the first week after the opening of each term and during the two weeks preceding the close of the same, and also once in each month, for the purpose of organizing and examining the schools, ascertaining that the pupils are properly supplied with books, and to inquire into the regulations, discipline, habits, and proficiency of the pupils. *Ibid.*, S. 33.

Bible in.— A portion of the Bible shall be read daily in the public schools, without written note or oral comment; but a pupil whose parent or guardian informs the teacher in writing that he has conscientious scruples against it, shall not be required to read from any particular version, or to take any personal part in the reading. The school committee shall not purchase or use school books in the public schools calculated to favor the tenets of any particular religious sect. *Ibid.*, S. 19.

The school committee of W. did not exceed their authority in passing an order that the Bible should be read and prayer offered at the opening of the schools on the morning of each day.— *Spiller v. Woburn*, 12 Allen, 127.

Blanks.— Blanks for the school census, the school registers, and forms for returns to be made by school committees, are supplied by the secretary of the board of education, and are distributed by the secretary of the school committee to the several persons charged with the duties in connection therewith. The secretary of the committee is required to send to the secretary of the board of education a list of the private schools in the town and the names of their principals. *Ibid.*, SS. 1, 2.

Census.— The school committee of each town is required annually to take and record the school census of all children between five and fifteen years of age and of all minors over fourteen years of age who cannot read at sight and write legibly simple sentences in the English language, residing in the town on the first day of September, such record to be completed on or before the first day of October. C. 43, S. 3.

Reports, Annual.— They shall annually make a detailed report of the condition of the several public schools, which shall contain any statements or suggestions relative to the schools which the committee consider necessary or proper. They shall cause said report to be printed, for the use of the inhabitants, in octavo, pamphlet form, of the size of the annual reports of the board of education, and transmit two copies thereof to the secretary of said board on or before the last day of April,

and shall deposit one copy in the office of the city or town-clerk. *Ibid.*, S. 6.

Returns, Annual.—The chairman and the secretary of each school committee are required annually on or before the thirtieth day of April to transmit to the secretary of the board of education a certificate filled out, signed, and sworn to by them, according to the form given in the statute showing the number of children in their town within the school ages; the average membership of the public schools for the school year last preceding; the amount of money raised by the town by taxation and expended during the last fiscal year; the number of weeks the schools were maintained by the town during the last school year; and, if the fact, that the town has maintained a high school during the year. *Ibid.*, S. 4.

Registers and Returns.—School committees shall cause the school registers to be faithfully kept in all the public schools, and shall annually, on or before the last day of April, make returns on the aforesaid forms of inquiry to the secretary of the board of education; and school committees of towns shall also specify therein the purposes to which the money received by their respective towns from the income of the school fund has been appropriated. In such returns, twenty days, or forty half days of actual session, shall be counted as one month. C. 43, S. 5.

A school committee cannot maintain an action of trespass for the taking of school registers out of their possession.—*Perkins v. Weston*, 3 Cush. 549.

Neglect to Report; Penalty.—A town whose report or returns do not reach the office of the secretary of the board of education on or before the fifteenth day of May shall forfeit ten per cent of the income of the school fund to which it would otherwise have been entitled. If such report or returns do not reach said office before the first day of June, the town's share of said income shall be retained by the treasurer and receiver-general, and shall be added to the principal of the school fund. A town which is not entitled to a portion of the school fund, and a city, whose report or returns do not reach said office on or before the first day of June, shall forfeit to the school fund two hundred dollars.

A town which has forfeited any part of its portion of the income of the school fund through the failure of the school committee to perform its duties relative to the school report and school returns may withhold the compensation of the committee. *Ibid.*, SS. 9, 10.

A town may appropriate money to indemnify its school committee for the expense of defending an action for libel, based upon their annual report, in which judgment has been rendered in their favor.—*Fuller v. Groton*, 11 Gray, 340; *Wilson v. Cambridge*, 101 Mass. 142; *Flood v. Leahy*, 183 Mass. 233.

Evening.—Any town may, and every city or town of ten thousand or more inhabitants shall, maintain annually evening schools for the instruction of persons over fourteen years of age in orthography, read-

ing, writing, the English language and grammar, geography, arithmetic, industrial drawing, both free hand and mechanical, the history of the United States, physiology and hygiene, and good behavior. Such other subjects may be taught in such schools as the school committee consider expedient. C. 42, S. 11.

Evening Schools, Notice of.— The school committee shall, two weeks next before the opening of each term of the evening schools, post in three or more public places of their town notice of the location of said schools, the date of the beginning of the term, the evenings of the week on which they shall be kept, such regulations as to attendance as they deem proper, and the provisions of section 35 of chapter 106. *Ibid.*, S. 13.

Illiterate Minors.— While a public evening school is maintained in a town, every minor over fourteen years of age who cannot write legibly simple sentences in the English language, residing in such town, is required to attend the same unless excused from so doing in the manner and under the conditions prescribed by the statute. Any person who employs such minor in violation of the provisions of the statute is liable to a forfeit of not more than one hundred dollars, for each offense; and any parent, guardian, or custodian of such minor who permits him to be so employed, is subject to a forfeit of not more than twenty dollars, to the use of the evening schools of the town. C. 106, S. 35.

Evening Lectures.— The school committee may employ competent persons to deliver lectures on the natural sciences, history, and kindred subjects, and may provide cards or pamphlets giving the titles and authors of books of reference on the subject-matter of said lectures which are contained in the local public libraries. C. 42, S. 14.

Exclusion of Pupils.— A school committee shall not permanently exclude a pupil from the public schools for alleged misconduct without first giving him an opportunity to be heard. C. 44, S. 8.

It is unlawful for a school committee to exclude a pupil permanently from a public school without a hearing, when applied for, upon the question of fact involved in his alleged misconduct.— *Bishop v. Rowley*, 165 Mass. 460; *Morrison v. Lawrence*, 181 Mass. 131; 186 Mass. 456.

Action for.— The parent, guardian, or custodian of a child who has been refused admission to or excluded from the public schools shall on application therefor be furnished by the school committee with a statement in writing of the reasons for the exclusion. After a statement has been so furnished a child who has been so refused admission to or excluded from said schools may recover damages from the town in an action of tort for unlawful exclusion, and may examine any member of the school committee or any other officer of the defendant town, upon interrogatories, as if he were a party to the action. *Ibid.*, S. 7.

The general school committee of a town have power to exclude from the public schools a child whom they deem to be of a licentious and immoral

character, although such character is not manifested by any acts of licentiousness or immorality within the school.—*Sherman v. Charlestown*, 8 Cush. 160.

A vote of a town to set off a certain person by name from one school district to another, without adding "and his estate," is invalid.—*Nye v. Marion*, 7 Gray, 245; *Alden v. Rounseville*, 7 Met. 218.

Tort is the exclusive remedy for a child against a town or city for exclusion from the public schools.—*Learock v. Putnam*, 111 Mass. 499.

A pupil was rightfully excluded from a public school by a teacher acting under the direction of one member of a school committee for disobedience to a rule made by the member of the committee and assented to by the other members.—*Russell v. Lynnfield*, 116 Mass. 365.

A child excluded from a city public school by a teacher, acting without authority from the school committee, must first appeal to the committee before bringing an action for exclusion against the city.—*Davis v. Boston*, 133 Mass. 103.

The decision of the school committee, acting in good faith in the management of the schools, upon matters of fact directly affecting the good order and discipline of the schools, is final so far as it relates to the rights of pupils to enjoy the privileges of the school.—*Watson v. Cambridge*, 157 Mass. 561; *Bishop v. Rowley*, 165 Mass. 460.

Fares on Street Railways.—All street and elevated railway companies are required to transport pupils of the public schools between any given point, from or to which it is necessary for them to ride in traveling to or from the schoolhouses in which they attend school and their homes, at a fare not exceeding one-half the regular fare charged by such companies for the transportation of other passengers between said points, and shall sell tickets for such transportation in lots of ten each. C. 112, S. 72.

The statute upheld as constitutional.—*Commonwealth v. Interstate, etc., St. Railway*, 187 Mass. 436.

Female Assistants.—In every public school having an average of fifty pupils, one or more female assistants shall be employed unless the town votes otherwise. C. 42, S. 17.

Flag, United States.—The school committee of every city and town shall provide for each schoolhouse in which public schools are maintained and which is not otherwise supplied, a United States flag of silk or bunting not less than four feet in length, and suitable apparatus whereby such flag may be displayed on the schoolhouse building or grounds every school day when the weather permits and on the inside of the schoolhouse on other school days. *Ibid.*, S. 50.

Foreign Flag, Display of.—The display of the flag or national emblem of a foreign country upon a public schoolhouse is forbidden. C. 206, S. 6.

Fund, State, how Applied.—The income of the state school fund shall be applied by the school committees of the towns receiving it to the support of the public schools therein; but said committees may apply not more than twenty-five per cent thereof to the purchase of books of reference, maps, and apparatus for the use of said schools. C. 41, S. 7.

High Schools.— Every city and every town containing five hundred families or householders shall, and any other town, may, maintain a high school, adequately equipped, which shall be kept by a principal and such assistants as may be needed, of competent ability and good morals, who shall give instruction in such subjects, designated in section 1 of this chapter, as the school committee consider expedient to be taught in the high school, and in such additional subjects as may be required for the general purpose of training and culture, as well as for the purpose of preparing pupils for admission to state normal schools, technical schools, and colleges. One or more courses of study, at least four years in length, shall be maintained in each such high school, and it shall be kept open for the benefit of all the inhabitants of the city or town for at least forty weeks, exclusive of vacations, in each year. Instruction may be given in a portion only of the foregoing requirements, if the town makes adequate provision for instruction in the others in the high school of another city or town. C. 42, S. 2.

The statutes, which require a certain amount of schooling to be provided by towns under a penalty, is not a definition or limit of the public schools which they have authority to provide for by taxation.— *Cushing v. Newburyport*, 10 Met. 508.

The town or city in which the school is and where payment for it is to be made is intended by the statute.— *Fiske v. Huntington*, 179 Mass. 571.

Towns Having no High Schools.— A town of less than five hundred families, or householders, in which a public high school or a public school of corresponding grade is not maintained, shall pay for the tuition of any child who resides in said town and who with the previous approval of the school committee of his town, attends the high school of another town or city. If a town neglects or refuses to pay for such tuition, it shall be liable therefor to the parent or guardian of the child, who has been furnished with the same, if the parent or guardian has paid for it; otherwise to the city or town furnishing the same. If the school committee of such town refuses, upon the completion by a pupil residing therein of the course of study provided by it, to approve his attendance in the high school of some other city or town in which he, in the opinion of the superintendent of schools of the town in which he resides, is qualified to enter, the town shall be liable for his tuition.

A town whose valuation is less than seven hundred and fifty thousand dollars shall be entitled to receive from the treasury of the commonwealth half of all necessary amounts which have actually been expended for high school tuition under the provisions of this section: *provided* that such expenditure shall be certified under oath to the board of education by its school committee within thirty days after the date of such expenditure; but, if a town of less than five hundred families maintains a high school of its own as provided in section 2, and employs at least two teachers therein, it shall be entitled to receive annually

from the treasury of the commonwealth towards the support of such schools, the sum of three hundred dollars.

No town, the valuation of which averages a larger sum for each pupil in the average membership of its public schools than the corresponding average for the commonwealth, shall receive money from the commonwealth under the provisions of this section; and no money shall be paid by the commonwealth for high school instruction hereunder, unless the high school in question has been approved by the board of education. *Ibid.*, S. 3.

The school committee of a town not required by law to maintain a high school may withdraw its approval of the attendance of a child residing in the town, at the high school of another town, and the child's parent is entitled to notice of the withdrawal.—*Millard v. Egremont*, 164 Mass. 430.

A town not obliged by law to maintain a high school, and which has a school of equal grade within its borders, cannot be required to pay for the tuition of a child of one of its inhabitants in another town because the parent of the child prefers one school to the other.—*Hurlburt v. Bowford*, 171 Mass. 501.

Stat. 1898, c. 496, § 3, upheld as constitutional. The refusal of a school committee to grant the request of a parent for their approval of the attendance by a child at a high school in a neighboring town made the town liable under the statute.—*Fiske v. Huntington*, 179 Mass. 571.

A contract made by a resident of a town in this commonwealth with another town to pay for the tuition of his children attending school in the latter town, with the consent of the school committee of that town, is valid.—*Wrentham v. Fales*, 185 Mass. 539.

In Adjacent Towns.—Two adjacent towns, each having less than five hundred families or householders, may vote to form one high school district for establishing a high school.

The school committees of such towns shall elect one person from each of their respective boards, and the persons so elected shall form the committee for the management and control of such school, with all the powers of school committees.

Such committee shall determine the location of the schoolhouse, if one is authorized, to be built by the towns of such high school district; otherwise, it shall authorize the location of such school alternately in the two towns. *Ibid.*, SS. 4-7.

Stat. 1869, c. 396, held to be unconstitutional and void, as authorizing a town to raise by taxation and appropriate money in aid of a private school. Gives a historical review of the subject.—*Jenkins v. Andover*, 103 Mass. 95.

Industrial.—A town may establish and maintain one or more industrial schools, and the school committee shall employ the teachers, prescribe the arts, trades, and occupations to be taught therein, and have the general control and management thereof; but it shall not expend for any such school an amount exceeding the appropriation specifically made therefor, nor compel a pupil to study any trade, art, or occupation without the consent of his parent or guardian. Attendance upon such school shall not take the place of the attendance upon public schools required by law. *Ibid.*, S. 10.

Manual Training.— Every city and town containing twenty thousand inhabitants or more shall maintain the teaching of manual training as part of both its elementary and its high school system. *Ibid.*, S. 9.

Minors, School Certificate.— Schooling certificates for minors under sixteen years of age, employed in a factory, workshop, or mercantile establishment are required to be approved by the superintendent of schools or by a person authorized by him, or if there is no superintendent, by a person authorized by a school committee; but no member of a school committee or other person shall approve such a certificate for any minor then in or about to enter his employment, or the employment of a firm, or corporation of which he is a member, officer, or employee.

An age and schooling certificate shall not be approved unless satisfactory evidence is furnished that such minor is of the age stated in the certificate. C. 106, SS. 29-31.

Money for Conveyance of Pupils.— A town may appropriate money for conveying pupils to and from the public schools, or, if it maintains no high school or public school of corresponding grade but affords high school instruction, by sending pupils to other towns, for the necessary transportation expenses of such pupils, the same to be expended by the school committee in its discretion. C. 25, S. 15.

A town is not obliged to make an appropriation for the conveyance of pupils to and from school, and if it does, the school committee is not bound to act under the conditions stated.— *Newcomb v. Rockport*, 183 Mass. 74.

Money by Taxation.— Towns shall raise by taxation money necessary for the support of public schools. C. 42, S. 22; C. 25, S. 15.

A town which refuses or neglects to raise money for the support of schools as required by this chapter shall forfeit an amount equal to twice the highest sum ever before voted for the support of schools therein. A town which refuses or neglects to choose a school committee shall forfeit not less than five hundred nor more than one thousand dollars, to the use of the county. C. 42, S. 23.

Three-fourths of such forfeiture so paid shall be paid by the county treasurer to the school committee, if any; otherwise, to the selectmen of the town from which it has been recovered, who shall appropriate it to the support of the schools of such town as if it had been regularly raised by the town for that purpose. *Ibid.*, S. 24.

The legislature may authorize a town to raise money for an agricultural college to be established therein by the commonwealth. Discusses general powers of taxation.— *Merrick v. Amherst*, 12 Allen, 500.

Money from Dog Licenses.— Money received by the county treasurer under the laws relating to dogs, and not paid out for damages, shall, in January, be paid back to the treasurers of towns in proportion to the amounts received from such towns; and the moneys so received shall be expended for the support of public libraries or schools. C. 102, S. 163.

School Money; Sectarian Schools.—Article XVIII of the amendments to the state constitution provides that all moneys raised by taxation in towns and cities for the support of public schools, and all moneys which may be appropriated by the state for the support of common schools shall be applied to and expended in no other school than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance, exclusively, of its own school.

Nautical.—A town may establish and maintain, upon shore or upon vessels at the election of the school committee, one or more schools for training young men or boys in nautical duties; such schools shall be subject to the provisions of section 10, except that the school committee may excuse boys attending such nautical schools from attendance on other schools. C. 42, S. 16.

Patriotic Exercises.—In all the public schools the last regular session, or a portion thereof, prior to the thirtieth day of May, known as Memorial Day, shall be devoted to patriotic exercises. *Ibid.*, S. 20.

Private Schools, Approval of.—For the purposes of the preceding section, school committees shall approve a private school only when the instruction in all the studies required by law is in the English language, and when they are satisfied that such instruction equals in thoroughness and efficiency and in the progress made therein the instruction in the public schools in the same city or town; but they shall not refuse to approve a private school on account of the religious teaching therein. C. 44, S. 2.

Where Child May Attend.—Every child shall have the right to attend the public schools in the city or town in which his parent or guardian has a legal residence or in which the child himself actually resides, subject to such reasonable regulations as to the numbers and qualifications of pupils to be admitted to the respective schools and as to other school matters, as the school committee shall from time to time prescribe. No child shall be excluded from a public school of any city or town on account of race, color, or religion. *Ibid.*, S. 3.

If a school committee acts in good faith in determining the facts in a given case its decision cannot be revised by the courts, but when a hearing is asked for upon a question of fact, it should be granted.—*Bishop v. Rowley*, 165 Mass. 460.

Property Held for Use of.—A town may hold real and personal estate in trust for the support of schools, and for the promotion of education within the limits of the town. C. 25, S. 13.

Schoolhouses.—Every town shall provide and maintain a sufficient number of schoolhouses, properly furnished and conveniently located for the accommodation of all children therein who are entitled to at-

tend the public schools. A town which for one year refuses or neglects to comply with the requirements of this section shall forfeit not less than five hundred nor more than one thousand dollars, to be paid and applied as provided in sections 23 and 24. The school committee, unless the town otherwise directs, shall have general charge and superintendence of the schoolhouses therein, shall keep them in good order, and shall procure a suitable place for the schools, if there is no schoolhouse, and provide fuel and all other things necessary for the comfort of the pupils therein, at the expense of the town. C. 42, S. 49.

The school committee are public officers and not liable for injuries to a person by a falling tree cut down by their orders on a high school lot. The doctrine of *respondet superior* does not apply to public officers employing agents in the discharge of a public duty.—*McKenna v. Kimball*, 145 Mass. 555, and cases cited.

Construction.—Special requirements are made in the statutes in regard to ventilation, exits, fire-escapes, apparatus for the extinguishment of fires, and the construction of flues and air-ducts used for heating or ventilating purposes in all buildings used for the public schools. C. 104, SS. 22, 23, 25, 26.

Sanitary Arrangements.—The law requires that every schoolhouse shall be provided with a sufficient number of proper water-closets, earth-closets, or privies for the reasonable use of the pupils, and shall be ventilated in such a manner that the air shall not become so impure as to be injurious to health. If it appears to an inspector of factories and buildings that further or different sanitary or ventilating provisions, which can be provided without unreasonable expense, are required in any schoolhouse, he may issue a written order to the proper person or authority, directing such sanitary or ventilating provisions to be made. C. 106, SS. 54, 55.

Location.—A town may, at a meeting called for the purpose, determine the location of its schoolhouses, and adopt all necessary measures to purchase and procure land therefor, as provided in sections 47, 48, and 49 of chapter 25. C. 42, S. 51.

A town failed to determine the location of a schoolhouse by a vote at the town meeting, "that the selectmen be authorized to build a schoolhouse in District Number Six, if, in their judgment, they shall think it necessary."—*Crosby v. Dracut*, 109 Mass. 206; *Spalding v. Chelmsford*, 117 Mass. 393.

A school committee cannot bind the town by an agreement to purchase land not authorized by a vote of the town.—*Marsh v. Dedham*, 137 Mass. 235.

Not Leased.—A town may not lease any schoolhouse in actual use as such. C. 25, S. 13.

Superintendents Appointed.—The school committee of a town which is not within an existing union for the employment of a superintendent may, and after the first day of July in the year nineteen hundred and two shall, at the expense of the town, employ a superintendent of

schools, who, under the direction and control of the committee, shall have the care and supervision of the public schools. The compensation of the superintendent shall not be less than one dollar and fifty cents for each day of actual service, and shall be determined by the school committee.

Two or more towns may, by a vote of each, form a district for the purpose of employing a superintendent of public schools therein.

Such superintendent shall be annually appointed by a joint committee, composed of the chairman and secretary of the school committee of each of the towns in said district, who shall determine the relative amount of service to be performed by him in each town, fix his salary, apportion the amount thereof to be paid by the several towns and certify the same to each town treasurer. C. 42, SS. 40-42.

A superintendent elected by the school committee of Boston under an ordinance afterwards repealed could recover for his services for the year for which he was elected, although rendered after the repeal of the ordinance.—*Kimball v. Salem*, 111 Mass. 87.

A school committee was justified in dismissing a school superintendent who was under indictment for adultery in another state.—*Freeman v. Bourne*, 170 Mass. 295.

Superintendents in Small Towns.—The school committees of two or more towns, having valuations for purposes of taxation below a limit fixed by the statute and an aggregate number of schools in all of not more than fifty nor less than twenty-five, and committees of four or more towns having a valuation below such limit, without reference to the limit in the number of schools, may form a union for the purpose of employing a superintendent of schools. The committees of such towns constitute a joint committee, who are required to organize by the choice of a chairman and secretary, each year, choose a superintendent, determine the relative amount of service to be performed by him in each town, fix his salary, and apportion the amount thereof to be paid by the several towns. *Ibid.*, SS. 43, 44.

Payment by Commonwealth.—The law provides that in certain cases and under certain conditions, where two or more towns have formed a union for the purpose of employing a superintendent of the schools within such towns, a contribution towards the salary of such superintendent, and the salaries of teachers employed in the public schools therein, shall be made by the commonwealth. *Ibid.*, SS. 45, 47, 48.

Teachers' Certificates.—Every teacher before he opens any public school is required to obtain from the school committee a certificate in duplicate of his qualifications, one of which shall be deposited with the selectmen before any payment is made to him on account of his services. *Ibid.*, S. 29.

The failure of a teacher to file the certificate of his qualifications until two days after the opening of school held not to defeat his claim for com-

pensation after he has deposited the certificate.—*Libby v. Douglas*, 175 Mass. 128.

Teachers, Civil Service.—Teachers of the public schools are not affected as to their selection or appointment by the rules of the civil service. C. 19, S. 9.

Compensation from School Funds.—With the approval of the board of education in certain cases a sum not more than two dollars a week may be paid to any teacher employed in the public schools who shall be approved by the school committee. C. 42, S. 30.

Text-Books; Supplies.—The school committee shall at the expense of the town purchase text-books and other school supplies used in the public schools, and, subject to such regulations as to their care and custody as it may prescribe, loan them to the pupils of such schools free of charge, and if such instruction is given therein, in the use of tools and in cooking, may so purchase and loan the tools, implements and materials necessary therefor. *Ibid.*, S. 35.

It shall, at the expense of the town and in accordance with appropriations therefor previously made, procure apparatus, reference books, and other means of illustration.

A change may be made in the school books used in the public schools by a vote of two-thirds of the whole school committee at a meeting thereof, notice of such intended change having been given at a previous meeting. *Ibid.*, SS. 37, 38.

Truants; Truant Officers.—The school committee of every town shall appoint and fix the compensation of one or more truant officers and shall make regulations for their government. Such officers shall not receive fees for their services. The school committees of two or more towns may employ the same truant officers. *Ibid.*, S. 12.

Truant officers shall inquire into all cases arising under the provisions of sections 1 and 6 of chapter 44 and sections 3, 4, and 5 of this chapter, and may make complaints and serve legal processes issued under the provisions of this chapter. They shall have the oversight of children placed on probation under the provisions of section 7. A truant officer may apprehend and take to school, without a warrant, any truant or absentee found wandering about in the streets or public places thereof. C. 46, S. 13.

Truant Officers Visit Factories.—Truant officers may visit the factories, workshops, and mercantile establishments in their several cities and towns and ascertain whether any minors are employed therein contrary to the provisions of this chapter, and shall report any cases of such illegal employment to the school committee and to the chief of the district police or to the inspector of factories and public buildings. C. 106, S. 34.

Truants, Habitual, and Absentees.—Children between the ages of seven and sixteen years who are habitually absent from school, or found wandering about in the streets or public places of any town or growing up in idleness and ignorance, are subject to arrest by any competent police or truant officer, and may upon complaint of such officer and conviction thereof be committed to the county truant school or other public institution for a term not exceeding two years. C. 46, SS. 3, 4, 5.

Vacation Schools.—The school committee of a city or town may establish and maintain schools to be kept open during the whole or any part of the summer vacation; but attendance thereon shall not be compulsory or be considered as a part of the school attendance required by law. C. 42, S. 15.

Vaccination.—A child who has not been vaccinated shall not be admitted to a public school except upon presentation of a certificate signed by a regular practicing physician that he is not a fit subject for vaccination.

Pupils in the public schools may be excluded during the continuance in the household to which they belong of a contagious disease. C. 44, S. 6. See also Acts 1902, C. 544, S. 10.

SELECTMEN.

Election.—Every town at its annual town meeting is required to choose annually three, five, seven, or nine selectmen, to serve during the year; *provided* that any town, having previously determined by a vote at an annual meeting, or a meeting held at least thirty days before the annual meeting at which the change becomes operative, may vote to elect its selectmen in the following manner.

If the number fixed by the town is three, it shall at the annual meeting when such vote is cast, or at the next annual meeting, elect one selectman for the term of one year, one for the term of two years, and one for the term of three years; if the number is five, it shall elect one for the term of one year, two for terms of two years, and two for terms of three years; if the number is seven, it shall elect two for terms of one year, two for terms of two years, and three for terms of three years; if the number is nine, it shall elect three for terms of one year, three for terms of two years, and three for terms of three years; and at each annual meeting thereafter, it shall elect one, two, or three for the term of three years, as the term of office of one, two, or three expires. C. 11, SS. 334, 339.

Number Increased or Diminished.—A town which votes to increase or diminish the number of its selectmen at an annual meeting, may at that meeting, or any annual meeting thereafter, elect one or more such additional officers or omit to elect one or more such officers, so as to

bring the number to the limit fixed by the vote of the town, with terms of office expiring in the manner provided in section 339; but one selectman shall be elected annually. A town which has voted to elect its selectmen as provided in section 339, may at any annual meeting rescind such action; but such rescission shall not affect the term of office of any such officer. *Ibid.*, S. 340.

Where a town had accepted the Stat. of 1898, c. 548, § 335, which provides for the election of selectmen for a term of three years, it was *held* that an article in the warrant "to choose all necessary town officers for the ensuing year" was sufficient to authorize the town to choose officers according to the law in force.—*Wheeler v. Carter*, 180 Mass. 382.

At a meeting held more than thirty days before the next annual meeting, a town may vote to abandon the method of electing selectmen provided by § 335 of Acts of 1898, c. 548, theretofore adopted by the town, and return to its former method of electing three selectmen to serve for one year.—*Attorney-General v. Hutchinson*, 185 Mass. 85.

Oath.—Selectmen are required to take the oath of office before entering upon their duties under penalty of a forfeit for not doing so. C. 25, S. 67.

Act as Assessors and Overseers of the Poor.—They are assessors of taxes and overseers of the poor in towns which have not authorized the election of such officers. Towns which choose assessors or overseers of the poor for one year may provide by vote that the selectmen shall act also as assessors or as overseers of the poor, or both; but such vote in any town using official ballots shall be cast at a meeting held at least thirty days before the annual meeting at which the selectmen are to be chosen. Before acting as assessors they shall take the oath required of such officers. C. 25, S. 85; C. 11, S. 343.

An article in the warrant for a town meeting, "to choose all necessary town officers," *held* sufficient to authorize the election of selectmen who were to serve also as assessors of taxes and overseers of the poor.—*Commonwealth v. Wentworth*, 145 Mass. 50.

Animal Inspectors, Appointed.—They shall annually in March appoint one or more inspectors of animals subject to the approval of the state board of cattle commissioners. C. 90, S. 12.

Apprentices.—They may approve the indenture of a minor in certain cases, inquire into the treatment of such apprentices, and defend them from cruelty, neglect, or breach of contract of their masters. C. 155, SS. 5, 10.

Auctioneers' Licenses; Unlawful Sales.—They may license one or more suitable inhabitants of the town as auctioneers. C. 64, SS. 1, 9.

They may seize goods sold or offered for sale by auction contrary to law and forfeited to the town. *Ibid.*, S. 11.

The signing of the memorandum by the auctioneer on the day after the sale was *held* to satisfy the statute of frauds, his agency for the seller still existing.—*White v. Dahlquist Mfg. Co.*, 179 Mass. 427.

Auditor, Temporary, Appointed.—In case the office of auditor becomes vacant, they shall appoint an auditor to serve until another is chosen and qualified. C. 11, S. 360.

Automobiles Regulated.—The selectmen of any town may make special regulations as to the speed of automobiles and motor cycles, and as to the use of such vehicles on particular roads or ways, including their complete exclusion therefrom. No such special regulation, however, increasing or lessening the speed of such vehicles on the public highways, or excluding them therefrom, shall be effective unless the same has been published in a newspaper, if any, published in the town, or in a newspaper published in the county in which the town is situated. Upon written protest filed with the Massachusetts highway commission, as provided in this act, and a hearing before such commission, any such regulation may be annulled. Such regulations shall be posted conspicuously by, or under, the direction of said commission on signboards at such points as said commission may deem necessary. No ordinance, by-law, or regulation now in force in any town which regulates the speed at which such vehicles shall be run upon its public ways shall hereafter have any force or effect, but nothing in this act contained shall be so construed as to affect the rights of boards of park commissioners as established by law. Acts of 1905, C. 366.

Bicycles, Velocipedes.—They may regulate the use by children of velocipedes on sidewalks, and grant permits to persons to ride bicycles or tricycles for specified times on specified portions of public ways at any rate of speed. C. 52, S. 9.

Billiards, Bowling Alleys, Licenses.—They may grant a license to a person to keep a billiard, pool, sippio table, or a bowling alley for gain upon certain conditions, and may revoke the same at pleasure. C. 102, SS. 168, 186.

A license to keep a pool-table for hire under the statute may be revoked without notice to the licensee.—*Commonwealth v. Kinsley*, 133 Mass. 578.

Building Inspector; Removal of Buildings.—In towns accepting the provisions of this chapter, they may appoint an inspector of buildings.

They may abate and remove a building or structure erected in violation of section 2 of this chapter. C. 104, SS. 3, 4.

Buildings, Burnt or Dangerous, Removed.—The selectmen after notice in writing to the owner of a burnt, dilapidated, or dangerous building, and a hearing, may adjudge it a nuisance and make and record an order disposing of the same.

They shall have the same power to abate and remove such a nuisance as is given to a board of health in a city or town. C. 101, SS. 1, 5.

Burial Agent.—They shall designate an agent to bury the bodies of deceased soldiers, sailors, and marines, their wives, widows, or dependent

mothers, if such persons die without sufficient means to defray their funeral expenses. C. 79, S. 20.

Caucuses, Polling-Places for.—The selectmen shall be notified by the town committee of the date when caucuses are to be held two weeks prior to such date, and shall, at the expense of the town, provide polling-places for such caucuses and notify said committee ten days prior to said date, of the polling-places so provided. C. 11, S. 95.

Upon the written request of twenty-five voters at least twelve days prior to the date of any caucus, the selectmen shall arrange the polling-place so as to allow voting to proceed in two or more lines at said caucus. *Ibid.*, S. 105.

Cemeteries, Funds; Land for.—They may, in conjunction with the cemetery commissioners, direct the town treasurer how to invest funds and to pay the income therefrom. C. 78, S. 24.

They may, with the approval of their town, apply to the county commissioners in certain cases to take land for cemetery purposes. *Ibid.*, S. 11.

The right of the town to take adjoining land to enlarge a burying-ground is not affected by the manner in which the title to the land is limited among its owners.—*Bulch v. County Commissioners*, 103 Mass. 106.

Constables; Bonds.—They may appoint as many constables in addition to those elected by the town as they may deem necessary. C. 25, S. 87.

The bond of a constable shall be approved by the selectmen who shall indorse their approval thereon. *Ibid.*, S. 88.

Dangerous Diseases.—They shall use all possible care to prevent the spread of a dangerous disease in the town, and take all such measures as they deem best for that purpose. C. 75, S. 43.

They are authorized to give certificates stating the causes of death of persons dying of dangerous diseases, in certain cases. C. 78, S. 43.

Dogs.—The selectmen are charged with the duty of enforcing the laws in relation to dogs. When a complaint is lodged with them of damage inflicted by dogs, the chairman appraises the amount, if the same is not above twenty dollars, and if in his opinion it exceeds that amount, the matter is referred to three disinterested persons who make the appraisal. The chairman returns a certificate of the damages found to the treasurer of the county, except in the county of Suffolk. In case of the absence or illness of the chairman, any one of the selectmen may discharge the duties imposed upon him. C. 102, SS. 151, 157.

The owner of sheep worried, maimed, and killed by dogs had no claim against a town, it not appearing that he had produced to the selectmen sufficient proof of his loss.—*Chenery v. Holden*, 16 Gray, 125.

Mandamus was granted ordering the selectmen to draw an order on the town treasurer to pay the owner for the loss of a horse, which was so wor-

ried and frightened by a dog that he became worthless and had to be killed.—*Osborn v. Lenox*, 2 Allen, 207.

The owner of a dog engaged with other dogs in doing damage to sheep is liable to the county for all the damage done, not alone for the part done by his own dog.—*Worcester v. Ashworth*, 160 Mass. 186.

Killing.— It is the duty of the chairman of the board to issue annually in July a warrant to one or more police officers or constables to kill all unlicensed dogs; and within forty-eight hours after any person has been convicted of keeping any dog contrary to law, the chairman is required to order such person to remove such dog from the town; if the order be not obeyed, it is the duty of the selectmen to order the dog to be killed. C. 102, SS. 140, 143.

Under the statute any person is authorized to kill any dog, found and being without a collar, if he is out of the enclosure of his owner.—*Tower v. Tower*, 18 Pick. 262.

So even if the dog is licensed, although such killing is before July 1, and no warrant has been issued.—*Morewood v. Wakefield*, 133 Mass. 240.

An officer having a warrant issued under the statute may enter the premises of the owner and kill the dog there, or he may take the dog out of the enclosure and destroy him outside.—*Blair v. Forehand*, 100 Mass. 136.

It is the officer's duty to make the complaint.—1 Op. Atty-Gen. 603.

Reward; Muzzling.— The selectmen may offer a reward for the killing of any dog found to have done damage, or for evidence of the ownership of such dog, to be paid by the county commissioners upon a certificate signed by the selectmen. They may order any dog in the town to be muzzled or restrained from running at large, and serve notice upon the owner or keeper of any dog who has done damage to kill or confine such dog. C. 102, SS. 158, 153.

Elections, Voting Precincts Authorized.— A town may direct its selectmen to prepare a division of the town into convenient voting precincts. The selectmen shall, so far as possible, make the center line of streets or ways, or other well-defined limits, the boundaries of the proposed precincts, and shall designate them by numbers or letters. They shall, within sixty days, file a report of their doings with the town-clerk, with a map or description of the proposed precincts, and with a statement of the number of male voters registered in each for the preceding annual election. If such report shall be rejected the town may at any time direct the selectmen to prepare a new division. C. 11, S. 166.

Voting Precincts Changed.— When a town has been divided into voting precincts or the voting precincts thereof have been changed, the selectmen shall post in the office of the town-clerk and in at least three public places in each new precinct a map or description in which the new precincts shall be designated by numbers or letters, and defined clearly and, so far as possible, by known boundaries; and they shall also furnish copies thereof to the registrars of voters and the assessors of such town, and to the election officers of each precinct so established. *Ibid.*, S. 168.

Polling-Places Designated.— The selectmen of every town divided into voting precincts shall, thirty days at least before the annual state election and ten days at least before any special election of a state officer therein, designate the polling-place for each voting precinct and shall cause it to be suitably fitted up and prepared therefor. It shall be in a public, orderly, and convenient portion of the precinct; but if no such polling-place can be had within the precinct, they may designate a polling-place in an adjoining precinct. No building or portion of a building shall be designated or used as a polling-place in which intoxicating liquor has been sold within the thirty days preceding the day of the election. When the polling-places have been designated the selectmen, in at least three public places in each precinct of the town, forthwith post a printed description of the polling-places designated, and may give further notice thereof. *Ibid.*, S. 186.

Marking-Shelves.— They shall provide marking-shelves or compartments in the polling-places, and have guard-rails so placed that only persons inside thereof can approach within six feet of the ballot-boxes or marking-shelves. There shall be a marking-shelf for every seventy-five voters, and not less than three in any town or voting precinct. *Ibid.*, S. 187.

Officers Appointed.— The selectmen of every town divided into voting precincts shall annually, between the first and fifteenth day of August, appoint as election officers for each voting precinct, one warden, one deputy-warden, one clerk, one deputy-clerk, two inspectors, and two deputy-inspectors, who shall be qualified voters of the precinct. They may, in like manner, appoint two inspectors and two deputy-inspectors in addition. *Ibid.*, S. 172.

Vacancies.— If a vacancy in the number of the election officers occurs before the twentieth day of September in any year, or if an election officer declines his appointment and gives notice thereof to the town clerk before said date, or if at a special election the office of an election officer is vacant, the selectmen shall fill the vacancy; and the appointment shall be so made as to preserve the equal representation of the two leading political parties. *Ibid.*, S. 175.

Candidates Ineligible.— No person shall, at a town election, be eligible or act as an election officer in a voting precinct in which he is a candidate for election; and if a person who has been appointed an election officer becomes such a candidate, and does not forthwith resign his office, the selectmen shall, if he is a candidate at a state election, remove him from office before the first day of November, or, if he is a candidate at a town election, the selectmen shall remove him before the election. *Ibid.*, S. 176.

Ballot-Clerks.— At state elections in towns not divided into voting precincts, and at town elections in towns in which official ballots are

used, the selectmen shall, before the opening of the polls, appoint two voters as ballot-clerks, who shall have charge of the ballots and furnish them to voters. The selectmen or moderator presiding at such election may subsequently appoint additional ballot-clerks not exceeding one for every four hundred voters and majority fraction thereof, and may likewise fill any vacancy after the opening of the polls. Such ballot-clerks shall be so appointed as to represent the two leading political parties as equally as may be, except that such additional ballot-clerks may be appointed from voters not representing either of them. C. 11, S. 180.

Tellers.— Selectmen of towns shall, at least five days before a state or town election, appoint voters as tellers to assist at the ballot-box and in checking the names of voters upon the voting-lists, and in canvassing and counting the votes. Tellers appointed at elections at which official ballots are used shall be so appointed that the election officers making and assisting in the canvass and count of votes shall equally represent the two leading political parties. *Ibid.*, S. 182.

Canvass of Votes.— At state elections, in towns not divided into voting precincts, the canvass and count of votes shall be made by the selectmen and town-clerk who may be assisted by the tellers. *Ibid.*, S. 237.

Precinct Returns, Examination.—The selectmen and town-clerk in towns divided into voting precincts, shall forthwith after a state election examine the copies of the records of the election officers, and if any error appears therein, they shall forthwith give notice thereof to the officers by whom the error was made, who shall forthwith make an additional record under oath in conformity with the facts and deliver a copy thereof to the town-clerk or board.

The selectmen and town-clerk shall examine all original and all additional copies of the records and make them part of the records of such election, and shall certify and attest copies of the records of votes for the several candidates. *Ibid.*, S. 243.

Records, Examination.— If a district for the election of representatives in the general court is composed of one town, the selectmen shall forthwith examine the records of the votes and determine who appear to be elected. *Ibid.*, S. 256.

Certificates.— The selectmen, or the town-clerk, acting in a representative district shall make duplicate certificates of election of the persons appearing to be elected and shall, within fifteen days after the day of the election, transmit one certificate to the secretary of the commonwealth, and shall transmit the other certificate, by a constable or other officer, to the person elected. The officer transmitting the certificate shall make a return of his doings. *Ibid.*, S. 260.

Presiding Officer.—In towns not divided into voting precincts, the selectmen shall by their chairman or senior member present, preside at meetings for the election of state officers.

At every other meeting for election purposes, in the absence of the town-clerk, the chairman or member longest in continuous service shall preside until a moderator is elected. *Ibid.*, SS. 179, 331.

Senators and Councillors.—Elections held to choose senators and councillors shall be called by the selectmen, annually, for the Tuesday after the first Monday in November. The selectmen shall preside at such meetings impartially, shall receive, sort, and count the votes of all qualified voters present, in open meeting, in presence of the town clerk, who shall make a fair record in presence of the selectmen and in open town meeting, of the name of every person voted for and of the number of votes against his name; and a fair copy of this record shall be attested by the selectmen and the town-clerk, and shall be sealed up, directed to the secretary of the commonwealth for the time being with a subscription expressing the purport of the contents thereof, and delivered by the town-clerk to the sheriff of the county in which such town lies, thirty days at least before the first Wednesday of January. Cons., C. 1, Art. II.

Voting Regulations.—They may make regulations not inconsistent with law, as to the use of ballot-boxes and seals, counting, and other apparatus, the receiving of ballots, and the counting and returning of votes. C. 11, S. 9.

Electric Lines, Private.—They may authorize a person to construct for private use, along and under public ways, lines for the transmission by electricity of light, heat, or power, and for other purposes, and regulate the use thereof. C. 25, SS. 52, 54.

Factory Bells, Whistles, Gongs.—The selectmen may designate in writing such size and weight of bells, whistles, and gongs, and the hours and manner in which the same may be used by manufacturers and others for the purpose of giving notice to their employees. C. 106, S. 9.

The ringing of a heavy bell at an early hour in the morning to arouse operatives in a mill is a private nuisance, and the owner of the mill may be restrained by injunction from ringing the bell.—*Davis v. Sawyer*, 133 Mass. 289.

Statute upheld.—*Sawyer v. Davis*, 136 Mass. 239.

Fire, Causes, Investigation.—They shall in certain cases investigate the causes and circumstances of fires which have destroyed property in the town. C. 32, S. 2.

They may, in certain cases, enter into buildings and upon premises and inquire as to the presence of combustible materials and the existence of conditions liable to cause fire. They shall order, in writing, such materials, if found, to be removed, and such conditions, if existing to be remedied. *Ibid.*, S. 5.

Fire Department; Engineers.— They may establish a fire department in their town and shall thereafter annually in April appoint engineers, not exceeding twelve, for the term of one year, and may for cause remove an engineer, after notice to him and a hearing, and shall fill all vacancies. *Ibid.*, S. 38.

Fire District Meeting.— They may, upon the written application of seven freeholders, inhabitants of a proposed fire district, give notice in like manner as for town meetings, requiring the voters to assemble at some suitable place in the district for the purpose of establishing a fire district. *Ibid.*, S. 51.

A declaration made by tellers of the result of a vote in the election of an officer of a fire district in the presence of the moderator and received by the meeting is a declaration by the moderator within the meaning of the statute.—*Fritz v. Crean*, 182 Mass. 433.

Fire Enginemen.— The selectmen of towns provided with fire engines may appoint enginemen to hold office at the pleasure of the selectmen who may discharge them if they are negligent in the performance of their duties. They may also appoint enginemen at the request of the proprietors of private engines to be employed for the benefit of the town. They may also appoint hosemen not exceeding twenty to each hose carriage. *Ibid.*, SS. 26, 29, 32.

The vote of a town having a fire department to appropriate money to pay members of a private organization whose members have not been appointed enginemen is *ultra vires* and void.—*Greenough v. Wakefield*, 127 Mass. 275.

Fireproof Safes or Vaults.— The selectmen are required, at the expense of the town, to provide and maintain fireproof rooms, safes, or vaults for the safe-keeping of the public records of the town other than the records of teachers of the public schools. C. 35, S. 18.

Fire Protection.— If they consider it necessary for the protection of persons and property against fire, the selectmen may cause aqueduct corporations to put in conductors or pipes for the purpose of attaching hydrants, or conducting water into reservoirs. C. 123, S. 52.

A city is not liable for a personal injury resulting from the negligence of officers and members of its fire department in performing their duties. Stat. 1867, c. 158, cited with approval.—*Fisher v. Boston*, 104 Mass. 87.

The statute does not apply to a water company whose charter does not confer power upon the town or its selectmen.—*Smith v. Dedham*, 144 Mass. 177.

Buildings of Combustible Materials Licensed.— In a town accepting the provisions of this and the following section, or corresponding provisions of earlier laws, buildings or structures of certain dimensions and of combustible materials, may be erected, if a license therefor be granted by the selectmen. C. 104, S. 2.

Firewards.— They may annually in March or April appoint firewards, and one or more forest firewards, or act as such in towns having less than three hundred voters, by vote of the town. C. 32, SS. 9, 16.

Fireworks, Licenses.— They may grant licenses for the keeping, storage, transportation, use, manufacture, or sale of explosives, upon such terms as may be prescribed in the by-laws of the town. C. 102, S. 98.

Fish.— The selectmen are required to enforce the laws for the protection of food fish. They may grant licenses to dig and grow oysters and permits for taking shell-fish for bait. They may, when instructed by their towns so to do, control, regulate, or prohibit the taking of certain kinds of fish, and have power to appoint and fix the compensation of fish wardens and to designate constables for the detection and prosecution of violations of the laws relating to shell fisheries. They may authorize the construction of weirs, nets, and traps for fishing purposes; and, in towns in which salt fish are landed from vessels, they are required annually to appoint a public weigher of fish, who himself may appoint deputies subject to the approval of the chairman. C. 91, SS. 55-136; C. 56, SS. 29, 30.

A town in its corporate capacity has no authority to transfer the right of taking oysters within its limits, and any contract made by a town for that purpose is void.— *Dill v. Wareham*, 7 Met. 438.

The statute authorizes any inhabitant of the commonwealth to take scallops for his family use without a permit from the waters of any city or town.— *Williams v. Delano*, 155 Mass. 10.

The oysters planted by a licensee, and left by him when his license expires, can be removed only under the provisions of the statute. He has no property in them, and a subsequent licensee can take them.— *Keene v. Gifford*, 158 Mass. 123.

The selectmen, acting under the statute and a vote of the town, have power to make a regulation forbidding the taking of clams without a permit, except for the purposes and in the quantities authorized by the statute, and providing that permits shall be granted only to inhabitants of the town.— *Commonwealth v. Hilton*, 174 Mass. 33.

Furnaces, License.— In towns which have accepted the provisions of the law providing therefor, the selectmen may grant licenses for the erection of a building in which a steam engine or furnace is to be used for the melting of iron or making glass, and make such regulations as to the height of flues and protection against fire as they deem necessary for the safety of the neighborhood. Any furnace or engine erected or used contrary to the provisions of this chapter shall be deemed a common nuisance, and may be removed by the selectmen. C. 102, SS. 73, 77.

An assessment made by a board of health upon an owner of land to abate a nuisance held void for failure to notify him of the hearing.— *Hall v. Staples*, 166 Mass. 399; *Grace v. Newton Board of Health*, 135 Mass. 490.

Garbage Contracts.— They may make contracts for a term of years for the disposal of the garbage, refuse, and offal of the town. C. 25, S. 14.

A town may make contracts for the exercise of its corporate powers and for the purposes enumerated in the statutes. They cannot engage in enterprises foreign to the purposes for which they were incorporated, nor assume responsibilities which involve undertakings not within the compass of their

corporate powers.—*State v. Falmouth*, 167 Mass. 115; *Vincent v. Nantucket*, 12 Cush. 103, 106.

A board of health transcends its powers in attempting to award a contract under c. 25, § 14, in violation of a vote of the town making the appropriation, that the work should "be let out to the lowest responsible bidder."—*Oliver v. Gale*, 182 Mass. 39.

Grain Measurers.—They shall annually appoint one or more measurers of grain, and if only one is appointed, may authorize him to appoint deputies. C. 57, S. 26.

Habitual Drinker.—A selectman may request, in writing, any person not to sell or deliver liquor to a person having the drink habit, and may bring an action for damages against the person so requested, if such person thereafter sells or delivers liquor to such habitual drinker. C. 100, S. 63.

The master is liable for the wrongful acts of his servant done in the execution of the authority given by the master. Defendant's barkeeper sold intoxicating liquor to plaintiff's husband after notice from her not to do so. Defendant *held* liable, although he had instructed the barkeeper not to sell to the husband.—*George v. Gobey*, 128 Mass. 289.

The form of notice by a wife *held* sufficient: "My husband has been in the habit of getting liquor here and coming home drunk. * * * I don't want you to give him any more drink."—*Kennedy v. Saunders*, 142 Mass. 9.

The notice need not state that the husband has the habit.—*Tate v. Donovan*, 143 Mass. 590.

An adult son, although not dependent on his father for support, may maintain an action against a person selling the father spirituous or intoxicating liquors, after notice in writing by the son forbidding the sale.—*Taylor v. Carroll*, 145 Mass. 95.

The notice must be given by a person who holds the relationship prescribed by the statute, and it must appear that the defendant knew or believed that such relationship existed.—*Sackett v. Ruder*, 152 Mass. 402.

The notice may be signed for the wife by another person in her name at her request and in her presence, she knowing and understanding the contents of the notice.—*Finnegan v. Lucy*, 157 Mass. 439.

Hay and Straw Inspectors; Weighers.—In towns where pressed hay or straw is sold, they may appoint one or more inspectors of the same. C. 57, S. 36.

They may from time to time appoint weighers of hay, and may remove the same. *Ibid.*, S. 35.

Health Board.—They shall act as a board of health, in case no such board is chosen by the town. C. 11, S. 338.

Hearings.—They may summon witnesses and administer oaths at hearings before them; and the chairman may issue warrants to bring witnesses who have been summoned to testify before the board. C. 175, SS. 8, 9.

The common council of a city has no power to commit and punish a witness for contempt.—*Whitcomb's Case*, 120 Mass. 118.

Highways and County Bridges.—They may exercise original and concurrent jurisdiction with the county commissioners of petitions affecting a highway or county bridge in the town. C. 48, S. 58.

Highway Districts Assigned.—The selectmen of a town having more than one surveyor of highways shall annually, before the first day of May, assign in writing to each surveyor the limits and divisions of the ways to be kept in repair by him. C. 51, S. 4.

Horse Keeping.—In towns having less than five thousand inhabitants, the selectmen may license suitable persons to keep more than four horses in specified buildings, and may revoke such licenses at pleasure. C. 102, S. 72.

The statute gives the board of health the final determination of the questions involved in the erection of a stable.—*White v. Kenney*, 157 Mass. 12.

The superior court has no jurisdiction in equity to enforce the provisions of the statute.—*Langmaid v. Reed*, 159 Mass. 411; *Baldwin v. Wilbraham*, 140 Mass. 459. Stat. 1890, c. 395, gives that court jurisdiction.

The Stat. 1891, c. 220, is an exercise of the police power of the commonwealth and not of the right of eminent domain and is constitutional.—*Newton v. Joyce*, 166 Mass. 84.

The subdivision of one building and use of another on a lot so as to keep eleven horses, held to be an evasion of the law.—*Brookline v. Hatch*, 167 Mass. 381.

Innholders' Licenses.—They may license persons to be innholders or common victuallers. *Ibid.*, SS. 2-5, 22.

Mandamus will not lie to compel a mayor of a city to sign a license granted by the board of aldermen, when the mayor is not satisfied that the petitioner has complied with all the provisions of the law.—*Deehan v. Johnson*, 141 Mass. 23.

Intelligence Offices.—They may grant licenses to suitable persons to keep intelligence offices, subject to the provisions of sections 186 to 189 of this chapter, and may revoke them at pleasure. *Ibid.*, SS. 24, 27, 186.

Junk Dealers.—They may grant licenses to suitable persons to keep and deal in junk, old metals, and second-hand articles, subject to the provisions of sections 186 to 189, if by-laws therefor have been adopted in their town, and may revoke such licenses at pleasure. *Ibid.*, SS. 29, 30, 31, 186.

One who has no shop, but buys to sell again odds and ends of new iron left from larger pieces used in the manufacture of carriages and not available for use, is not a junk dealer.—*Commonwealth v. Ringold*, 182 Mass. 308.

The keeper of a shop where gold and silver are bought is required to have a license, although he does not sell the gold and silver, but has it made into dental supplies, or sends it to the United States mint to be made into coin.—*Commonwealth v. Hood*, 183 Mass. 196.

Jury List.—They annually prepare a list of persons qualified to act as jurors, and post the same in public places at least ten days before it is submitted to a town-meeting. C. 176, SS. 4, 5.

Jurors, Drawing of.—With the town-clerk they have charge of the drawing of jurors, and if served with a venire shall warn a town meeting for the purpose of drawing jurors as ordered by the town or provided by law. C. 176, SS. 19, 21, 22.

Land for Public Uses.—They shall cause to be recorded the taking by the town of land for public uses, and may agree, on behalf of the town, with the owner, upon the amount of damages sustained by him. C. 25, SS. 48, 49.

Liquor Licenses, Applications for.—They may during March and April receive, publish notice of, investigate, and act upon applications for licenses, and in April grant such licenses to take effect on the first day of May following. C. 100, S. 12.

They may refuse to issue a license to any person by them deemed unfit to receive the same, and nothing in this chapter shall be so construed as to compel the licensing board to grant licenses. *Ibid.*, S. 16.

A fee paid for a license to sell intoxicating liquors cannot be recovered back. City or town officers cannot be compelled to grant licenses.—*Emery v. Lowell*, 127 Mass. 140.

A form of published notice of application for license held sufficient.—*Braconier v. Packard*, 136 Mass. 50.

It is incumbent on the licensee to see that the posting of the notice required to be posted on the premises is properly done.—*McGinnis v. Medway*, 176 Mass. 71.

Clubs; Parks.—They may grant licenses to clubs; but no licenses shall be granted to be exercised in public parks, pleasure grounds, or reservations. *Ibid.*, SS. 88, 38.

In a city which has voted not to grant licenses to sell intoxicating liquors, if a club by its agent uses a place for the purchase and storage of such liquors for its members and for dispensing the same to them, the place is a common nuisance, and the agent may be convicted of maintaining such nuisance.—*Commonwealth v. Baker*, 152 Mass. 337.

A member of an incorporated club arrested on the premises after having just drawn lager beer in glasses from a keg can be convicted under the statute. It is not necessary to prove that the place is used mainly for the purpose of selling, distributing, or dispensing intoxicating liquors.—*Commonwealth v. Fleckner*, 167 Mass. 13.

Forfeited.—They may declare forfeited a license to sell intoxicating liquors, upon notice to the licensee and satisfactory proof that he has violated or permitted the violation of, and condition thereof. *Ibid.*, S. 47.

A license cannot be revoked arbitrarily. That must be done upon proof satisfactory to the licensing board of a violation of the conditions of the license, and that fact should appear upon their records.—*Commonwealth v. Moylan*, 119 Mass. 110; *Commonwealth v. Hamer*, 128 Mass. 76; *Commonwealth v. Wall*, 145 Mass. 216.

Liquor Selling, Arrest for.—A selectman may, without a warrant, arrest any person whom he finds in the act of illegally selling, transporting, distributing, or delivering intoxicating liquor, and seize the liquor, vessels, and implements of sale in possession of such person. *Ibid.*, S. 86.

Any citizen may enter complaints for violations of the law.—*Commonwealth v. Murphy*, 147 Mass. 577.

Stopped, when.—They may stop, for a period not exceeding three days at one time, the sale and delivery of liquor by persons holding licenses of the first three classes, in cases of riot or great public excitement. *Ibid.*, S. 39.

Vote upon License; Town Warrant.—They shall insert in the warrant for the annual meeting of the town an article providing for a vote upon the question, "shall license be granted for the sale of intoxicating liquors in this town?" C. 100, S. 10.

Statute held to be constitutional.—*Commonwealth v. Fredericks*, 119 Mass. 205.

A form of license held sufficient.—*Murphy v. Nolan*, 126 Mass. 542.

A license which sets forth the name of the street only and not "the building in which the business is to be carried on" is defective.—*Commonwealth v. Merriam*, 136 Mass. 433; *Commonwealth v. Cauley*, 150 Mass. 272.

Licenses held to have been legally revoked upon notice and a hearing, where a partnership designation was used but no partnership existed.—*Commonwealth v. Bearce*, 150 Mass. 389; *McGinnis v. Medway*, 176 Mass. 67.

Lumber, Wood, and Bark, Surveyors of.—They may grant licenses to surveyors of lumber and measurers of wood and bark to act in an adjoining town, to be in force not later than the next annual meeting of the town. C. 60, S. 7; C. 57, S. 76.

Main Drains and Common Sewers.—They may lay, make, repair, and maintain main drains or common sewers in public or private ways or private land, and may take land necessary therefor. C. 49, S. 1.

They may fix the annual charges for the use of common sewers, and may ascertain, assess, and certify the charges to be paid by persons who enter their particular drains into such sewers or receive benefit thereby for draining their lands or buildings. *Ibid.*, SS. 6, 3.

No action can be maintained for the recovery of an assessment upon a person's entering his particular drain into a common sewer by a city or town; the only remedy is the enforcement of the lien given by the statute.—*Roxbury v. Nickerson*, 114 Mass. 544.

A town has no authority by statute to lay out and construct drains or sewers, and is not responsible for damages resulting from work done under the supposed authority of illegal and void votes.—*Lemon v. Newton*, 134 Mass. 416.

A sewer assessment cannot be laid upon land of a cemetery corporation which, by its charter, is perpetually set apart as a burial place for the dead, and can neither be sold, used for profit, nor appropriated to any other purpose.—*Mt. Auburn Cemetery v. Cambridge*, 150 Mass. 12.

A town is liable to a landowner for damages resulting from neglect to keep its sewers free from obstructions.—*Bates v. Westborough*, 151 Mass. 174; *Child v. Boston*, 4 Allen, 41; *Emery v. Lowell*, 104 Mass. 13; *Murphy v. Lowell*, 124 Mass. 564; *Allen v. Boston*, 159 Mass. 324.

A town has power to widen a common drain or to clear it from obstructions, although it is upon private land and outside the limits of any highway.—*Melrose v. Hiland*, 163 Mass. 303.

The Act of 1892, c. 245, authorizing municipal authorities of towns and cities to establish annual charges for the use of common sewers held to be constitutional.—*Carson v. Brockton*, 175 Mass. 242.

Cases defining the powers and liabilities of the public authorities of a city concerning main drains and common sewers: *Child v. Boston*, 4 Allen,

52; *Carr v. Dooley*, 122 Mass. 258; *Hill v. Boston*, *Ibid.* 344; *Butler v. Worcester*, 112 Mass. 542; *French v. Lowell*, 117 Mass. 363; *Brown v. Fitchburg*, 128 Mass. 282; *Fairbanks v. Fitchburg*, 132 Mass. 48; *Gray v. Boston*, 139 Mass. 328; *Ayer v. Somerville*, 143 Mass. 585; *Collins v. Holyoke*, 146 Mass. 298; *Allen v. Charlestown*, 111 Mass. 123.

Assessments for.— They may determine the method of making assessments for drains and sewers; the amounts to be paid by persons for the privilege of using the same; the amounts to be paid by persons who enter a common sewer laid by a private person; and may grant permits for the opening of a main drain or sewer for the purpose of clearing or repairing it. C. 49, SS. 7, 8, 9, 37, 40, 29.

Particular Sewers.— They may lay, make, and maintain particular sewers from the common sewer to the street line, and, at the cost of the owner, from the street line to a house or building. They may make regulations for the construction and use of all particular sewers and impose penalties not exceeding twenty dollars for their violation. *Ibid.*, S. 12.

Sewer and Water Pipes Laid in New Way.— In towns which have accepted the provisions of this section or corresponding provisions of earlier laws, the selectmen may, when a town way is laid out, altered, or widened, enter and lay sewer and water pipes therein before possession is taken for the purpose of constructing such way. C. 48, S. 72.

Militia.— The assessors of towns make lists of persons liable to enrollment in the militia; but the selectmen, when ordered by the commander-in-chief, are required to make a draft or accept volunteers for such service. They are also required to provide for the use of each regiment, battalion, corps of cadets, or portion of the volunteer militia within the limits of their town a suitable armory, suitable places for parade, drill, and target practice, a suitable room for the headquarters, located within their limits, of each brigade, regiment, separate battalion, or corps of cadets, for the keeping of books, the transaction of business, and the instruction of officers, with necessary fuel and lights, or a reasonable allowance therefor. C. 16, S. 10; Acts of 1903, C. 457.

It is their duty on the first day of January to make a return to the adjutant-general, under oath, of the expenses incurred by the town for the maintenance of the armory. C. 16, S. 105.

Riots.— In case of a riot, or when a tumult, riot, or mob is threatened, and it so appears to the selectmen of a town, they may issue a precept directed to any commander of a brigade, regiment, battalion, corps of cadets, or company within their jurisdiction, directing him to order his command or a part thereof to appear at a time and place therein specified, to aid the civil authority in suppressing such violence and supporting the laws; which precept shall be in substance as given in the statute, shall be signed by such selectmen, and may be varied to

suit the circumstances of the case; and a copy of the same shall be immediately forwarded to the commander-in-chief. *Ibid.*, S. 121.

Carriages, Et Cetera, Provided.—The selectmen of a town to which men belong who have been ordered out, detached, or drafted, when required in writing by a commander of a regiment or detachment, shall provide carriages to attend them with supplies, and provide necessary camp equipage and utensils until notified to the contrary by the commanding officer, and shall present their accounts for the same to the quartermaster-general. *Ibid.*, S. 126.

The determination of the mayor of a city that a riot or mob is threatened is conclusive that the exigency existed to authorize him to call out the volunteer militia to aid the civil authority in enforcing the laws. The military forces so called out may perform only such service, and render such aid as is required by the civil officers.—*Ela v. Smith*, 5 Gray, 121.

Camping-Ground.—Ground for an encampment of militia, in time of peace, shall not be occupied without the consent of the selectmen of the town where the encampment is to be held, unless by order of the commander-in-chief. *Ibid.*, S. 130.

The commanding officer of the volunteer militia has no authority to order the annual encampment to be held on land of a private person without his consent.—*Brigham v. Edmands*, 7 Gray, 359.

Milk Inspectors.—They may annually appoint one or more inspectors of milk who may, with the approval of the selectmen, employ collectors of samples. C. 56, SS. 51, 52.

The legislature has power to make it a criminal offense to sell pure milk mixed with water. A certificate of an inspector was admitted in evidence.—*Commonwealth v. Waite*, 11 Allen, 264.

The fact that an inspector purchased a sample of milk without disclosing his purpose, and giving the seller an opportunity to ask for a sealed sample, did not render the evidence incompetent.—*Commonwealth v. Coleman*, 157 Mass. 460.

An inspector cannot appoint an agent who shall have the right in the absence of the inspector and without his immediate personal control to take, by force and against the will of the owner, samples of milk from a carriage used for the conveyance of milk.—*Commonwealth v. Smith*, 141 Mass. 135.

Moving Buildings, Permits for.—No person shall move a building in a town way without written permission from the selectmen or road commissioners. C. 52, S. 13.

Night Watch.—They may prescribe additional night watch to be kept, and further provision for prevention of fires, and the better protection of life in case of fire, to be made by keepers of hotels, boarding or lodging-houses, or family hotels, in their town. C. 104, S. 31.

Pawnbrokers.—They may license suitable persons as pawnbrokers, if ordinances or by-laws therefor have been adopted by the town, subject to the provisions of sections 186 to 189, and may revoke such licenses at pleasure.

They may enter or authorize any officer for them to enter upon the

premises used by a licensed pawnbroker and examine all articles taken in pawn or stored by him, and all books and inventories relating thereto. C. 102, SS. 33, 36.

Perambulation.— Two or more selectmen shall perambulate the town lines once in every five years. C. 25, S. 2.

The recent perambulation of a line between two towns by the selectmen when duly recorded affords strong but not conclusive evidence that it is the true boundary line. The duties of selectmen are ministerial not judicial; they cannot alter town lines; that can be done only by the commonwealth.— *Freeman v. Kenney*, 15 Pick. 44; *Middleborough v. Taunton*, 2 Cush. 406; *Putnam v. Bond*, 100 Mass. 62; *Commonwealth v. Heffron*, 102 Mass. 151.

Petroleum, Handling of.— They may grant licenses for the storage, keeping, manufacturing, or refining of petroleum or of its products. C. 102, SS. 114, 115.

The statutes do not justify the refining of petroleum at any place where a necessary consequence of the manufacture is the emission of vapors which constitute a nuisance at common law.— *Commonwealth v. Kidder*, 107 Mass. 188.

The restoration of a building partly destroyed by fire did not require the taking out of a license or permit.— *Somerville v. Walker*, 168 Mass. 388.

Playgrounds, Damages for.— They shall fix the damages sustained by the owner of private lands taken for public playgrounds. C. 28, S. 20.

Police, Municipal.— Upon their requisition the mayor of any city may provide police officers for duty in the town. C. 26, S. 20.

Police Officers, Appoint.— They may appoint police officers with limited powers, to serve during the pleasure of the selectmen. C. 25, S. 94.

The appointment of a police officer by the selectmen of a town "to continue in said office till the next annual town meeting" is an appointment during their pleasure.— *Commonwealth v. Huggins*, 4 Gray, 34.

A vote of the selectmen appointing a person "on police duty" is a sufficient appointment of him as a police officer under the statute.— *Commonwealth v. Cushing*, 99 Mass. 592.

If no limitation is made in the vote appointing a special police officer, he is held to have all the powers mentioned in the statute.— *Commonwealth v. Sullivan*, 165 Mass. 183.

Race Track, Land for.— They shall locate and fix the terms and conditions under which land to be used as a race track or trotting park shall be laid out or used, and may discontinue such use. C. 214, S. 32.

Railroads, Complaints Against.— They may apply to the county commissioners alleging grounds of complaint against a railroad a part of which is located in the town, and in case a petition by the voters asking them to make such application be refused by them, they shall indorse upon the petition their reasons for refusal and return it to the petitioners. In like manner, they may apply to such commissioners where it appears that a railroad so crosses a public way as to obstruct it, and that repairs or alterations should be made in the crossing, and the corporation owning it neglects or refuses to keep a bridge or other structure at such crossing in proper repair. C. 111, SS. 16, 132, 134.

Grade Crossings.—Upon application of the selectmen, the county commissioners may adjudge that public necessity requires that a railroad crossing be made upon a level with a public way. *Ibid.*, S. 128.

The selectmen may petition the superior court for the abolition of a grade crossing. *Ibid.*, S. 149.

Such petition may include several crossings or several railroads crossing at or near the same point, or two or more petitions may be consolidated and heard as one. *Ibid.*, S. 150.

In proceedings under Stat. 1890, c. 428, for the abolition of grade crossings in a town, the town is not entitled to be allowed as part of the cost of the alterations the expense incurred by it for counsel and witness fees in disputing the allowance of the account presented by the railroad company and disallowed by the auditor.—*Westborough, Petitioner*, 184 Mass. 107.

Grade Crossing, Alterations.—The selectmen, acting by their chairman thereto duly authorized by them, may, on behalf of the town, sign a written agreement with a railroad corporation for alterations in a railroad crossing and the approaches thereto. *Ibid.*, S. 157.

Certiorari is the proper remedy if a board of public officers, when required by statute to perform a certain duty, do not refuse to act, but proceed to perform it in a manner founded upon an erroneous construction of the statute.—*Cambridge v. R. R. Commissioners*, 153 Mass. 161.

The cutting off of access to the public streets of a town by a railroad company in changing the grade of the street on which it abuts at a point between the land and the connecting street is a special and peculiar injury for which the owner may recover damages.—*Putnam v. Boston & Providence R. R.*, 182 Mass. 351.

Where a report of commissioners under Stat. 1890, c. 428, does not provide for the paving of the gutters of the new way, the petitioning town has no right to impose a part of the expense of a local improvement, which it alone ought to bear, upon the railroad and the commonwealth by putting in a gutter better than required by any standard which existed there at the time of the change in the crossing.—*Norwood, Petitioner*, 183 Mass. 147.

A case in which land damages were awarded and expenses adjusted between a railroad corporation and a town for the widening of a street, under peculiar conditions.—*N. Y., etc., R. R. v. Blackstone*, 184 Mass. 491.

If land of a railroad company has become a public highway by prescription, an owner of adjoining land cannot acquire a private way by adverse use in traveling over it.—*Providence, etc., Steamboat Co. v. Fall River*, 187 Mass. 45.

Enjoined.—Upon petition of the selectmen the supreme judicial court in certain cases will enjoin a railroad corporation from entering upon, altering, excavating, or crossing a public way. *Ibid.*, S. 141.

The selectmen of the town within which the way is situated are the only persons competent to invoke the powers of the court under the statute.—*Brainard v. Connecticut River R. R. Co.*, 7 Cush. 506; *Nichols v. Boston & Maine Railroad*, 174 Mass. 379.

Sign-Boards.—They may request a railroad corporation to erect and maintain sign-boards at a grade crossing. *Ibid.*, S. 191.

An open and traveled street in a city is a "traveled place," within the statute, and a railroad corporation is bound to maintain a sign-board and other precautions required at railroad crossings, at the place where it crosses the road.—*Whittaker v. Boston & Maine Railroad*, 7 Gray, 98.

Cases showing special conditions at railroad crossings: *Williams v. Clark*, 140 Mass. 238; *Johanson v. Boston & Maine Railroad*, 153 Mass. 58; *Stewart v. New York, etc., Railroad*, 170 Mass. 430.

Location.—They may agree with the directors of a railroad corporation as to a route for a railroad in the town, and give the directors a certificate setting it forth. *Ibid.*, S. 42.

The statute does not authorize a railroad to be constructed, without express grant from the legislature, within the legal location of the railroad of another corporation appropriated and used by that corporation.—*Boston & Maine R. R. v. Lowell & Lawrence R. R.*, 124 Mass. 368.

They may impose such conditions as to the location, construction, and use of any branch, spur, or connecting or terminal track of a railroad authorized by the railroad commissioners as may be agreed upon between themselves and the directors. *Ibid.*, S. 43.

They may consent in writing to variations from the route fixed for a railroad in the town under the provisions of sections 42 and 43. *Ibid.*, S. 93.

They may petition the superior court for the appointment of a special commission to change the location of a railroad. *Ibid.*, S. 137.

Police.—Upon petition of a railroad corporation a street railway company or common carrier of passengers for hire, in certain cases, they may appoint employees of the petitioner as police officers. C. 108, SS. 13, 21.

Private Freight.—No railroad constructed by a person or corporation for private use in carrying freight, shall be constructed across or upon a highway, town way, or traveled place without the consent of the selectmen, nor except in a place and manner approved by them. They may make regulations governing the use of such road and may order changes in its track. C. 111, S. 279.

The provisions of the statute do not apply to a corporation using the streets under a special charter.—*Howard v. Union Freight Railroad*, 156 Mass. 159.

Stations, Relocation.—A railroad corporation may relocate passenger stations and freight depots with the approval, in writing, of the board of railroad commissioners and of the selectmen of the town in which such stations or depots are situated. *Ibid.*, S. 179.

A relocation of a passenger station, approved by the selectmen, held valid.—*Attorney-General v. Eastern Railroad*, 137 Mass. 45.

Two railroad stations can be relocated at the same point in one proceeding.—*Cunningham v. Railroad Commissioners*, 158 Mass. 104.

Railroad Stock, how Voted.—The selectmen of a town holding stock or securities of a railroad corporation may represent the town at all meetings of the corporation, and vote upon all shares of stock owned by the town. *Ibid.*, S. 53.

A person, not a stockholder, who is duly appointed by a city to represent it at the meetings of the stockholders of a railroad corporation and vote on the stock, which it owns therein, may be elected a director of the corporation.—*Wight v. Springfield, etc., R. R.*, 117 Mass. 226.

Recognizance for the Town.—They may authorize a person to enter into a recognizance required by a vote of the town, in the name and on behalf of the town. C. 25, S. 58.

Registrars of Voters.—In every town having three hundred voters, they shall appoint three persons who, with the town-clerk, shall constitute a board of registrars of voters, and may fill temporary vacancies in such board. C. 11, SS. 25, 29.

In Small Towns.—In towns having less than three hundred voters registered therein for the annual state election, the selectmen and the town-clerk shall constitute a board of registrars of voters. Provision is made, however, in case of the number of registered voters in such towns increasing for the appointment of registrars the same as in towns having more than three hundred voters. *Ibid.*, S. 26.

Reports, Annual.—They shall annually, before the annual town meeting, cause a report of the doings of the town, its officers, and boards, a list of persons drawn as jurors, and other matters, to be printed for the use of the inhabitants. C. 25, S. 29.

Rewards for Capture of Criminals.—They may offer a reward not exceeding five hundred dollars for the detection or capture of a person who has committed a felony in the town, such reward to be paid by the treasurer on their warrant. C. 217, S. 10.

A reward offered by the mayor of Boston for the apprehension and conviction of incendiaries, *held* not unlimited, but as having expired after the lapse of three years and eight months.—*Loring v. Boston*, 7 Met. 409.

A city watchman who, while on duty, discovers a person setting fire to a building, and prosecutes him to conviction, cannot claim a reward offered by the city for the detection and conviction of an incendiary.—*Pool v. Boston*, 5 Cush. 219; *Dunham v. Stockbridge*, 133 Mass. 233.

An offer of reward made by the mayor on behalf of the city, and subsequently ratified by the city council, is binding on the city, although so ratified after the service was performed for which the reward was offered.—*Crawshaw v. Roxbury*, 7 Gray, 374.

An offer of reward for the detection and conviction of the person who set fire to a dwelling-house, by the selectmen, without alleging that they did it on behalf of the town, *held* not binding on the town.—*Cadding v. Mansfield*, 7 Gray, 272; *Brown v. Bradlee*, 156 Mass. 28.

Riots.—It is the duty of each selectman to use every endeavor, consistent with his personal safety, to disperse a riotous assemblage in the town; if necessary, he shall command all persons present to assist him and to arrest the rioters. C. 211, S. 1.

SEWERS.

See "Main Drains and Common Sewers," *supra*.

Shade Trees.— They may authorize the planting of shade trees in the public ways, if such planting will not interfere with the public travel or private rights. C. 53, S. 6.

A highway surveyor has no power summarily to cut down and remove a shade tree standing in the highway upon being notified that it is unsound and dangerous to travelers; but under Pub. Stat., c. 52, § 10, as amended by Stat. 1885, c. 123, § 2, must proceed to obtain authority to do so upon due proceedings had from the proper municipal authorities, meanwhile taking due precaution against danger.— *Chase v. Lowell*, 149 Mass. 85; *White v. Godfrey*, 97 Mass. 475; *Bliss v. Ball*, 99 Mass. 597.

Shade trees located in a highway by road commissioners do not incommode or endanger public travel, and this decision cannot be revised by a jury.— *Washburn v. Easton*, 172 Mass. 525.

Sidewalks.— They may, in towns which have accepted the provisions of this section or corresponding provisions of earlier laws, establish and grade sidewalks in the streets and assess the abutters thereon one-half the cost thereof. Such sidewalks shall not be dug up or obstructed without the consent of the selectmen or road commissioners. C. 49, S. 42.

They may likewise, if in their judgment the public convenience so requires, grade and construct sidewalks in any street with or without edgestones, may cover the same with bricks, flat stones, concrete, gravel, or other appropriate material, and may assess not more than one-half the cost proportionally upon the abutters upon such sidewalks. *Ibid.*, S. 43.

City authorities have the power, in their discretion, to remove a sidewalk boarding on a paved street.— *Attorney-General v. Boston*, 142 Mass. 200.

No demand for payment of an assessment for the expense of constructing a sidewalk upon a non-resident owner of real estate is necessary.— *Lynde v. Malden*, 166 Mass. 244.

Slaughtering Cattle, Licenses.— They may grant licenses for the slaughtering of cattle, sheep, or other animals, or for other offensive trades or occupations. C. 75, SS. 99, 100, 108.

The selectmen have authority to bring suit in behalf of the town, by an injunction, where a building is used for a noxious trade to prevent its use in that matter.— *Watertown v. Mayo*, 109 Mass. 315.

Accidental destruction by fire of the combustible parts of a building does not forfeit the owner's right to continue, without permission of the selectmen, the same business in a new building on the same site.— *Watertown v. Sawyer*, 109 Mass. 320.

The licensing of a slaughter-house by the selectmen is subject to prohibition by the board of health on the ground that it is dangerous to the public health.— *Cambridge v. Trelegan*, 181 Mass. 565.

Soldiers Discharged, Parades.— They may grant permits to parade in public, with arms, to associations wholly composed of soldiers honorably discharged from the service of the United States, in certain cases. C. 16, S. 147.

The question whether a fire arm is within the statute (at a trial of a complaint for violation thereof) is for the court and not for the jury.—*Commonwealth v. Murphy*, 166 Mass. 171.

The Highland Cadets of Montreal, a military organization, come within the prohibition of the statute, and the governor of the commonwealth cannot waive it.—1 Op. Atty.-Gen. 552.

Steamboats, License.—They may license any person to run a steamboat for the conveyance of passengers on waters not within the maritime jurisdiction of the United States. C. 102, SS. 181, 182.

An indictment alleging that the defendant carried passengers need not further state that they were carried for hire to be sufficient.—*Commonwealth v. King*, 150 Mass. 221.

STREET RAILWAYS.

Alterations.—The selectmen may authorize structures or alterations in or along a public way, necessary to carry a street railway over or under a railroad. If such public way is a state highway, the consent of the Massachusetts highway commission is also necessary. C. 112, SS. 68, 38.

Street railway companies cannot enlarge their right of way within the limits of the public way until a plan thereof has been approved by the selectmen, after notice to owners of the land and a hearing. *Ibid.*, S. 5.

The statute authorizing the selectmen of a town to lay out, and the town to accept and allow, special space for the use of street railways does not impose an additional servitude on land previously taken for streets and highways, and is constitutional.—*Eustis v. Milton St. Railway Co.*, 183 Mass. 586.

Bridge Guards.—Every street railway company shall erect and maintain suitable guards upon every bridge or draw of a bridge crossed by its track, satisfactory to the selectmen of the town. *Ibid.*, S. 46.

Excise Tax.—They may petition the board of railroad commissioners to revise the excise tax to be paid by a street railway company, and at the hearing on said petition may submit evidence bearing on the matter. C. 14, S. 45.

Land for Pleasure Resorts.—They may impose restrictions upon the use of land by street railway companies for purposes of recreation and pleasure resorts. C. 112, S. 76.

Locations Granted.—They may grant locations for street railways, and prescribe the terms and conditions upon which the same are granted. C. 112, SS. 7, 9, 30.

They may alter the location of the tracks of a street railway. *Ibid.*, S. 31.

Under Stat. 1874, c. 29, § 11, a street railway corporation may be authorized to locate additional tracks, not connected with existing tracks, except by the tracks of another corporation.—*South Boston Railroad v. Middlesex Railroad*, 121 Mass. 485.

When a street railway company is constructing its road in accordance with

its charter over a location granted to it by the selectmen of the town and is using or intending to use the safe-guards pointed out by the statutes of the commonwealth the supreme judicial court will not say that it must use other or different safe-guards.—*Old Colony R. R. v. Rockland & A. St. Ry.*, 161 Mass. 417.

The statutes of the commonwealth permit the construction of street railways in part through private lands with the consent of the owners, or when the lands are acquired by purchase if all other requirements are complied with.—*Farnum v. Street Railway*, 178 Mass. 300.

A requirement in a location granted by the selectmen of a town to a street railway company that the company shall water the street over which the location was granted, from curb to curb, during certain months in the year, is a lawful restriction.—*Newcomb v. St. Railway*, 179 Mass. 449.

The refusal by an adjoining town of a location for street railway does not relieve a street railway company from the performance of a condition imposed by a town in granting its location that it should build ten miles of road within one year, if that amount of road can be built in that town alone.—*West Springfield, etc., Railway v. Bodurtha*, 181 Mass. 583.

Stat. 1898, c. 578, freed street railway companies from all obligation to keep any portion of the surface material of streets, roads, or bridges in repair, unless the obligation to repair was imposed in the grant of the original location. The act upheld as constitutional.—*Springfield v. Springfield St. Railway Co.*, 182 Mass. 41.

The selectmen of a town in granting a location to a street railway company do not act for the town, but as public officers exercising a quasi-judicial authority. And if, in the construction of a street railway under such a grant of location, surface water is caused to flow upon the land of an abutter to its injury, the owner has no remedy against the town.—*Hewett v. Canton*, 182 Mass. 220.

In granting a location to a street railway company, the selectmen act not as agents of the town, but as public officers, and are not bound to follow instructions contained in a vote passed at a town meeting.—*Flood v. Leahy*, 183 Mass. 232.

The selectmen are the proper parties to bring a bill in equity to enforce an order made by them as to the construction of the road of a street railway company in accordance with the grant of location.—*Selectmen of Gardner v. Templeton St. Railway*, 184 Mass. 294.

The selectmen cannot impose a condition regulating and restricting the fares to be charged.—*Keefe v. Lexington & Boston St. Railway*, 185 Mass. 183.

The selectmen cannot impose a more onerous duty as to repairs of the public ways than that imposed by the general laws.—*Hyde Park v. Old Colony St. Railway*, 188 Mass. 180.

The selectmen may lawfully impose a condition that the company shall furnish a system of electric lighting from its own power station for the entire length of the location, giving light of a specified power.—*Selectmen of Wellesley v. Boston & Worcester St. Railway*, 188 Mass. 250.

Locations Revoked.—They may revoke the grant of a location for a street railway, subject to the approval of the board of railroad commissioners. C. 112, S. 32.

The selectmen can revoke the location in the town of the track of a street railway which is chartered to extend beyond the limits of the town.—*Medford & C. R. R. Co. v. Somerville*, 111 Mass. 232.

Observance of Rules by.—They may petition the supreme judicial court or the superior court to compel the observance, and restrain the violation of all laws governing street railway companies, and of all orders, rules, and regulations made by the selectmen in accordance with the provisions of this chapter. *Ibid.*, S. 100.

It seems that a bill in equity may be maintained to the extent of revising the rulings of the board of railroad commissioners.—*Daniels v. Commonwealth Avenue Street Railway Co.*, 175 Mass. 518.

Permits to Repair Ways.—They may issue permits to a street railway company to open any street, road, or bridge, for the purpose of making repairs or renewals of the railway or any part thereof. *Ibid.*, S. 44.

A town is primarily liable for a defect in a highway occasioned by the careless, negligent, or unskilful conduct of a street railway corporation.—*Hawks v. Northampton*, 116 Mass. 420; *Fowler v. Gardner*, 169 Mass. 508.

A turnpike corporation held liable for a defect in a highway which it was bound to keep in repair, caused by a pile of snow thrown out by the snow-plow operated on the turnpike by a street railway company.—*Johnson v. Turnpike Corp.*, 109 Mass. 522.

So in the case of canal proprietors.—*Lowell v. Proprs. of Locks and Canals*, 104 Mass. 18.

It is the duty of a street railway corporation, as to third persons, to keep in repair that portion of a switch, being part of its own track which connects with the track of another railway corporation.—*McKenna v. Metropolitan Railroad Company*, 112 Mass. 57.

The provisions of the statute that every street railway company shall keep in repair to the satisfaction of certain officials, including road commissioners, the surface material of the portions of streets and roads occupied by its tracks, mean that if the road commissioner direct repairs, they must be made.—*Mahoney v. Street Railway*, 173 Mass. 587.

It is the duty of a town or city to keep the surface of the street occupied by a street railway in such condition as to be safe for travelers, although the statute requires the street railway company to keep such part of the street in repair.—*Hyde v. Boston*, 186 Mass. 115.

Regulation.—The selectmen may from time to time establish such regulations as to the rate of speed, the manner and extent of use of tracks and the number and routes of cars which run over such tracks within their town as the interest and convenience of the public may require, subject to the approval, revision, or alteration of the board of railroad commissioners. *Ibid.*, S. 40.

Signals; Motive Power.—They may make regulations as to the warnings to be given by the driver, motorman, or conductor, of the approach of street cars, and may determine the motive power to be used by a street railway company in the town. *Ibid.*, SS. 47, 51.

Tracks Removed, Discontinued.—They may order the tracks of a street railway to be removed from a public way after six months voluntary discontinuance by the corporation operating the railway or the use of the same, and may order the way to be restored to as good condition as it was in before being so occupied. They may order a street railway company to discontinue temporarily the use of any tracks within the limits of the town. *Ibid.*, SS. 36, 37.

Use of Tracks.—They may authorize a street railway company to enter upon and use the tracks of any other street railway company which it may meet and cross, in the town. *Ibid.*, S. 77.

One street railway corporation has no right to use the tracks of another such corporation to transport passengers in cars without the authority of

such second corporation or of the legislature.—*Metropolitan R. R. Co. v. Quincy R. R. Co.*, 12 Allen, 262.

The legislature may authorize a street railway corporation to use the tracks of another, or to lay similar tracks through the same streets, making compensation for using the tracks of the first, but not for diminution of its profits or the value of its franchise. The railroad commissioners may determine the rate of compensation in such a case.—*Metropolitan R. R. Co. v. Highland St. Ry. Co.*, 118 Mass. 290.

Where the tracks of a street railway company extended through a city into an adjoining town, and the city granted a license to another corporation to enter upon and use a portion of the tracks wholly within the limits of the city, it was held that no application to the selectmen of the town for permission to use such tracks was necessary.—*New Bedford & F. St. Ry. v. Acushnet St. Ry.*, 143 Mass. 200.

Street Superintendent.—In a town in which road commissioners or a surveyor of highways are not chosen, they shall appoint a superintendent of streets. C. 25, S. 85.

Telegraphs and Telephones, Private Use of Streets for.—They may authorize citizens of the commonwealth to establish and maintain poles, wires, and other appliances for telegraphic and telephonic communication in conformity to law. *Ibid.*, S. 56.

Corporations which, under public authority, have laid beneath a public street wires for transmission of intelligence for the benefit of the public, and have constructed conduits and manholes, which cannot be removed without destruction, have no rights of property in the street which can be the subject of assessment for damages, when the street is discontinued by statutory authority.—*N. E. Tel. & Tel. Co. v. Boston Terminal Co.*, 182 Mass. 397.

Theatrical Exhibitions, Etc., License.—The selectmen may, except as provided in section 46 of chapter 106 (concerning children), grant a license for theatrical exhibitions and other public shows and amusements, held or given for gain, upon such terms and conditions as they may deem reasonable, and may revoke or suspend such license at their pleasure; but no such license shall be granted for any such exhibition to be held upon the Lord's day, except for those named in section 5 of chapter 98; and no such exhibition mentioned in said section, except a concert of sacred music or a free open air concert given by a town upon a common, public park, street, or square, shall be given without such license. C. 102, S. 172.

The statute does not apply to a school for dancing.—*Commonwealth v. Gee*, 6 Cush. 174.

An actor can maintain an action for services in an unlicensed theatrical exhibition unless it appears that he knew his employer had no license.—*Roys v. Johnson*, 7 Gray, 162.

In an action for a balance due for services, a part of which was work to be done on Sunday, it was held that as the contract was entire, plaintiff could not recover.—*Stewart v. Thayer*, 168 Mass. 519.

A dance hall to which the public is admitted upon payment of a small fee is a public amusement within the meaning of the statute.—*Commonwealth v. Quinn*, 164 Mass. 11.

So is a merry-go-round, where a charge is made, for riding on the "flying-horses," in an enclosure opening on a public street.—*Commonwealth v. Le Bow*, 177 Mass. 347.

Town Meetings.—Town meetings, other than the annual meeting, may be held at such times as the selectmen may order.

The warrant for every town meeting shall be under the hands of the selectmen. If a majority shall vacate their offices, or if the full number fail to be elected or qualified, the selectmen in office may call a town meeting. C. 11, SS. 327-329.

The vote of a town, "that the meeting stand adjourned to the April meeting," was an adjournment to a fixed future time, and the town had authority at the April meeting to vote upon matters contained in the warrant for the March meeting, if the rights of third parties had not become vested under votes passed at the March meeting.—*Reed v. Acton*, 117 Mass. 384.

Town Officers, Minor, Appointed.—The selectmen have the power of appointment of certain minor officers, either by statute, or by special vote of the town. Among these are cullers of staves, keeper of the lockup, forester, inspectors of lime and of petroleum, weighers of beef, coal, machinery, and vessels, sealers of weights and measures, surveyors of marble, measurers of upper leather, and tramp officers. See the different titles.

Town Offices, Vacancies in.—If there is a failure to elect, or a vacancy occurs in certain town offices, they shall fill such vacancy by written appointment. If vacancies occur in boards, they shall join with the remaining members in filling such vacancy. C. 11, S. 361.

Treasurer and Collector, Bonds of.—The bonds of the town treasurer, of the collector of taxes, and of deputies acting as collectors, must be approved by the selectmen, who shall give written notice thereof to the assessors. C. 25, SS. 66, 72, 75, 77.

Office Vacated.—If a treasurer or collector of taxes fails to give bond within the time required by law, the selectmen may declare the office vacant, and appoint another in his place. C. 11, S. 359.

Vehicles, Regulation.—They may make rules for the regulation of carriages and other vehicles, to take effect after publication for one week in a newspaper published in the town or county. C. 25, S. 24.

War Veterans.—The hearing for removal or transfer of a veteran employed in the town shall be held before the selectmen; and in certain cases the selectmen shall take action to secure the employment of veterans in their town in preference to all others except women. C. 19, SS. 23, 24.

The Stat. of 1896, c. 517, §§ 2, 3, upheld as constitutional by three justices and the contrary by three justices, including Field, C. J., dissenting.—*Opinion of Justices*, 166 Mass. 589.

A janitor of Memorial Hall of the town of Oxford held to be not in the labor service of the town within the meaning of the statute.—*Johnson v. Kimball*, 170 Mass. 58.

An assessor is not a veteran holding an office or employment in the public service within the meaning of the statute, which was intended to provide for the preference of veterans in the offices and employments coming within the scope of Stat. 1884, c. 320, known as the civil service act and acts in amendment thereof.—*Ayers v. Hatch*, 175 Mass. 490.

Watch Districts, Meetings to Form.—They shall call a meeting of voters, upon the written request of seven freeholders, to establish a watch district. C. 31, S. 9.

Watch Officer.—They shall appoint an officer of the watch in case a town establishes a watch; if no watch has been established they may from time to time order a suitable watch to be kept in the town. *Ibid.*, SS. 1, 4.

Water Supply.—A town, by the action of its selectmen, ratified at a town meeting by a majority of the voters present, may purchase of any municipal or other corporation the right to take water from its sources, or its pipes, purchase its whole rights and franchises, or contract there-with for a supply of water. C. 25, S. 31.

The selectmen thereof may designate the streets and ways in another town through which the pipes for conveying the water shall be laid. *Ibid.*, S. 33.

On a petition by a millowner to the court for assessment of damages to his water rights, on the ground that there had been a taking of the waters within the meaning of a special act authorizing the town of W. to take the waters from his pond, and making the town liable for all damages caused thereby, it was *held* that such taking did not necessarily include all the waters of the pond, but so much only as was required for the purposes named in the act.—*Bailey v. Woburn*, 126 Mass. 416.

In a case where a town was under contract with a water company, it was *held* that a vote passed at a legal town meeting to renew the contract for ten years at a reduced rate per year did not come within the provisions of c. 27, § 27, of the Pub. Stats., and that the town by the vote did not incur a debt within the meaning of Pub. Stat., c. 29, § 1.—*Smith v. Dedham*, 144 Mass. 177.

Pollution.—Upon application of the selectmen, the supreme judicial or superior court will enjoin violations of the law touching the pollution of the sources of public water supply. C. 75, S. 126.

An owner of land on a natural stream may maintain a bill in equity to restrain another owner of land on the stream from polluting the waters of the stream to his material injury. This right is not taken away by the powers conferred on the board of health by Stat. 1878, c. 183.—*Harris v. Mackintosh*, 133 Mass. 228.

The city of Boston under Stat. 1846, c. 167, § 1, in taking the water rights in Long Pond also took the waters of any stream running into it, and any right then existing to pollute the waters of such stream.—*Martin v. Gleason*, 139 Mass. 183.

Temporary Supply.—They may, when so authorized by vote of the town, take water from any brook, stream, lake, pond, or reservoir for a period of not more than six months in any one year. In such case they shall, within thirty days, record in the registry of deeds for the county a statement of such taking, signed by the chairman of their board; and within sixty days after the termination of the use of the water so taken they shall fix the damages sustained by any person by the taking of water and rights to use any land so taken. C. 25, SS. 35–37.

WAYS.

Accepted by the Town.—No town way or private way laid out or altered by the selectmen or road commissioners shall be established until such laying out or alteration with the boundaries and measurements of the way be filed in the office of the town-clerk, and not less than seven days thereafter, is reported to and accepted by the town at a meeting called for that purpose. C. 48, S. 71.

The description in a vote to alter a certain road which crossed a railroad described the limits of the new road until it reached the railroad, then, beginning again on the other side of the railroad, described the limits of the road beyond, and then declared "all portions of the old road not included to be discontinued." *Held*, that the highway was not discontinued where it crossed the railroad, but in that part remaining unchanged.—*Nickerson v. New York, etc., R. R.*, 178 Mass. 195.

A town way is not laid out until the town has accepted the report of the board of survey appointed to lay out the way.—*Janvrin v. Poole*, 181 Mass. 463.

The uses included in the public easement when land is taken for a highway stated.—*New England Tel. & Tel. Co. v. Boston*, 182 Mass. 397.

A way once legally established still exists in law, notwithstanding the fact that the surface of the land over which the way was laid out has been lowered so that since 1851 it has been below high-water mark.—*Hunt v. Commonwealth*, 183 Mass. 307.

Even before Stat. 1875, c. 163, no right of the public could be acquired by prescription by passing and repassing over a portion of an open common.—*McKay v. Reading*, 184 Mass. 140.

An order from the proper authority to widen a public way, making it the duty of a city or town to perform the work of construction, gives no authority to the surveyor of highways or any municipal officer to perform the work, or make any contract for its performance without a vote of the city or town.—*Wormstead v. Lynn*, 184 Mass. 425, citing with approval *Bean v. Hyde Park*, 143 Mass. 245.

A petition for damages from a change of grade in a highway is properly filed, if it is taken to the office of the selectmen and handed to one of them in the presence of two others, although the board is not in session at the time, and no record of the filing is made.—*Garvey v. Revere*, 187 Mass. 545.

Alterations by Change of a Watercourse.—They may order the surveyor or road commissioner to make alterations in his work in cases where damages have resulted from the diversion of a water-course. C. 51, S. 12.

A town is not liable for injury to land caused by water flowing upon it from the opening of a culvert by its superintendent of streets, under direction of the selectmen, on the land of a third person not within the limits of a highway.—*Tyler v. Revere*, 183 Mass. 98.

Betterments.—They shall, in certain cases, determine the value of the benefit to land and assess upon the same a proportional share of the cost of the laying out, relocation, alteration, widening, grading, or discontinuance of a way. C. 50, S. 1.

An assessment by the aldermen of Boston upon land of Harvard College of part of the expense of altering a street, *held* to be a "civil imposition" and void, by reason of the exemption granted to the college in its charter.—*Harvard College v. Boston*, 104 Mass. 470.

As between a life tenant and a remainderman an assessment for a better-

ment is an encumbrance, to which the tenant for life must contribute to the extent of his interest during his life, and at his death the remainderman must bear the charge of the principal.—*Plympton v. Boston Dispensary*, 106 Mass. 544.

The board of officers authorized by the statute to lay out streets cannot empower one of their number to make a binding agreement as to betterments with a person whose estate is liable therefor.—*Boylston Market Assn. v. Boston*, 113 Mass. 528.

Upon an assessment by a sheriff's jury of the damages caused by taking land for a way, the value of the direct benefit done the estate should be deducted.—*Wood v. Hudson*, 114 Mass. 513.

Under Stat. 1871, c. 382, § 1, an assessment must be laid within two years from the passage of the order to lay out, alter, grade, or discontinue.—*Hitchcock v. Springfield*, 121 Mass. 382.

This statute does not apply to the locating anew of a highway by county commissioners under Gen. Stat., c. 43, § 12, as amended by Stat. 1873, c. 165.—*Tufts v. Somerville*, 122 Mass. 273.

The benefit to land caused by the widening of a street is to be assessed according to its value at the date of the widening.—*Treadwell v. Boston*, 123 Mass. 23.

An assessment of betterments upon an estate under the statute is valid, although made to a person who is neither the owner or occupant of the same.—*Smith v. Carney*, 127 Mass. 179.

Cases defining the powers and duties of the municipal authorities of cities concerning the assessment of betterments in laying out, relocation, alteration, widening, grading, or discontinuance of public ways: *Jones v. Boston*, 104 Mass. 461; *Codman v. Johnson*, *Ibid.* 491; *Whiting v. Boston*, 106 Mass. 89; *Chase v. Worcester*, 108 Mass. 60; *Prince v. Boston*, 111 Mass. 226; *Bancroft v. Boston*, 115 Mass. 377; *Boston Seamen's Friend Soc. v. Boston*, 116 Mass. 181; *Chase v. Springfield*, 119 Mass. 556; *Treadwell v. Boston*, 123 Mass. 23; *Breed v. Lynn*, 126 Mass. 290; *Somerville v. Dickerman*, 127 Mass. 272; *Fulmer v. Somerville*, 136 Mass. 556; *Masonic Building Assn. v. Brownell*, 164 Mass. 306; *Atkinson v. Newton*, 169 Mass. 240.

Damages for taking land for widening and improvement of a way are to be based on the value of the land, regardless of the widening, and should not include any enhanced value due to the improvement. Under the Betterment Act, betterments cannot be set off against damages.—*Benton v. Brookline*, 151 Mass. 250; *Godbold v. Chelsea*, 111 Mass. 294; *Upham v. Worcester*, 113 Mass. 97; *Sexton v. North Bridgewater*, 116 Mass. 200; *Green v. Fall River*, 113 Mass. 262.

Close Dedicated Way.—The selectmen or road commissioners shall, if the public safety so requires, cause such ways to be closed where they enter upon and unite with an existing public way or may by other sufficient means caution the public against entering thereon; otherwise the town shall be liable for damages arising from defects therein as in the case of ways duly laid out and established. C. 48, S. 99.

Commons or Parks, Taking Forbidden.—No part of a common or park shall be taken for the widening or altering of a highway, town way, or street, except with the consent of the inhabitants of the town after public notice. Such consent shall be expressed by vote of the inhabitants, if ten voters file a request in writing therefor with the selectmen within thirty days after publication of such notice. C. 53, S. 17.

The statute construed.—*Prince v. Crocker*, 166 Mass. 366.

County Jurisdiction Over.—The selectmen or road commissioners of a town may exercise original and concurrent jurisdiction with the county commissioners of petitions for altering, widening, relocating, or making specific repairs upon a highway or county bridge therein; but, except as to such portions thereof as by such action become unnecessary for public use, a town shall not discontinue any highway or county bridge or diminish the width thereof, nor shall it assess any part of the expense of altering, widening, relocating, or repairing upon the county. The proceedings of the town and its officers under the provisions of this section and the remedies of persons whose rights are affected thereby shall be the same as in the case of town ways. C. 48, S. 58.

Gates and Bars Replaced.—They shall, in certain cases, order gates, rails, bars, or fences replaced upon, or across, a highway, town way, or a private way. C. 53, S. 3.

When any public way is unlawfully obstructed, any individual who wants to use it in a lawful way may remove the obstruction.—*Arundel v. McCulloch*, 10 Mass. 71, and cases there cited.

It was undoubtedly competent for defendant or any other person having occasion to use the public road to remove all rails, bars, rocks, or other obstructions placed on the same, preventing the free and convenient use of the road.—*Hollenbeck v. Rowley*, 8 Allen, 473.

Town ways and private ways laid out under the provisions of the statutes of the commonwealth are public ways. The power vested in justices of the peace to order the removal of obstructions in such ways is not a judicial power, and does not protect a sheriff or deputy in executing it.—*Davis v. Smith*, 130 Mass. 113.

Land Taken for Protection.—The selectmen or road commissioners may enter upon, use, or survey or take any land for the purpose of securing or protecting a public way or bridge; and all damages sustained thereby shall be recovered in the same manner as damages caused by the laying out of town ways. C. 51, S. 14.

Laying Out, Alteration, and Repairs.—The selectmen or road commissioners of a town may lay out or alter town ways for the use of the town, and private ways for the use of one or more inhabitants thereof; or they may order specific repairs to be made on such ways. C. 48, S. 65.

The authority conferred by the statutes to lay out town ways is limited to roads having their *termini* within the town. To determine whether a way is a town way or public highway it is necessary to look into its origin. If it was laid out by the selectmen, it is a town way, if by county commissioners, it is a public highway.—*Monterey v. Co. Comrs.*, 7 Cush. 394.

A private way duly established for the use of one or more individuals of a town or proprietors therein is not discontinued by the unity in one person of title to, and possession of, all the land through which it is located.—*Flagg v. Flagg*, 16 Gray, 175.

The selectmen of a town have no authority to lay out a private way to be used only during the time of sleighing.—*Holcomb v. Moore*, 4 Allen, 529.

The selectmen may lay out a town way wholly upon land of citizens and against their consent, and capable of being used for no purpose of business or duty, but laid out with the design to provide access to points or places

in the lands of those citizens esteemed as pleasing natural scenery.—*Higginson v. Nahant*, 11 Allen, 530.

A private way for the use of one or more inhabitants of a town laid out by public authority is subject to be used by the public and is valid, although the whole damages awarded are to be paid by the person to whose house it leads.—*Denham v. County Commissioners*, 108 Mass. 202.

Cases stating conditions which involve "specific repairs:" *Sisson v. New Bedford*, 137 Mass. 255; *Bigelow v. Worcester*, 169 Mass. 390.

If a city or town, instead of leaving the repair of its ways to the public officers, designated by the statutes, undertakes to make the repairs by itself or agents, it is liable for injuries caused by their negligence.—*Butman v. Newton*, 179 Mass. 1.

In an action for an injury caused by a defect in a highway, it was held that, if it is shown that the selectmen of the town were misled by an error in the statutory notice stating the place of injury, it may be inferred that the town was misled.—*Tobin v. Brimfield*, 182 Mass. 117.

A loose and rotten root of a tree standing in a sidewalk of a city, which has stood there for sixty years or more and comes under the provisions of the statutes relating to shade trees, may be found to be a defect in the highway.—*Nestor v. Fall River*, 183 Mass. 265.

A petition for the laying out of a private way over land situated entirely in one town may be made to the county commissioners, and need not be made to the selectmen.—*Eldredge v. County Commissioners*, 185 Mass. 186.

The owner of land abutting on a highway has no right to require the construction of the highway to the line of his land for convenience of access.—*Attorney-General v. Mayor of Boston*, 186 Mass. 209.

A traveler on a bicycle may recover for an injury caused by such a defect in a highway that a town would be liable for injury caused by it to a traveler on foot or on horseback, or in any vehicle of the usual kinds.—*Spring v. Williamstown*, 186 Mass. 479.

In the absence of evidence to the contrary, the use of a private way by the public is presumed to be permissive.—*Weldon v. Prescott*, 187 Mass. 415.

A private way laid out for the use of a farm and brickyard, but open to and used by the public to a certain extent; held not enough, although covering a period of twenty years, to warrant the finding that the way has become a public highway by prescription.—*Aikens v. N. Y., N. H. & H. R. R.*, 188 Mass. 547.

Notice to Owners.—They shall give written notice to owners of land over which they intend to lay out or alter a way. C. 48, S. 67.

Under Rev. Stat., c. 24, a town way may be legally laid out by selectmen, and be accepted by the town, though the warrant for the town meeting at which such way is accepted is dated and issued before the way is laid out.—*Harrington v. Harrington*, 1 Met. 404.

The mayor and aldermen of Boston cannot legally lay out a street without first giving to all persons interested notice of their intention to do so.—*Stone v. Boston*, 2 Met. 220.

In a case where the owner of lands taken by a city for a public way had neither formal nor actual notice of the lay-out, but his agent had such notice, it was held that there was no ground for issuance of *certiorari* to quash the proceedings.—*Pickford v. Lynn*, 98 Mass. 491.

The posting by the selectmen of a town of a notice of their intention to lay out a town way, as required by c. 43, § 61, is sufficient notice to the owner of the land taken, though a resident of the town, if such ownership be not known to the selectmen.—*Healey v. Newton*, 119 Mass. 480.

A form of notice to owners over which a way was to be laid out, held insufficient.—*Fitchburg R. R. v. Fitchburg*, 121 Mass. 132.

Under peculiar conditions, notice held to be sufficient. When notice is delivered to the owner in person, it cannot be necessary to post up a notice.—*Lawrence v. Nahant et al.*, 136 Mass. 477.

Assess Damages.—They shall assess the damages sustained by a person by the laying out, alteration, or discontinuance of a town way or a private way, or by specific repairs in the manner provided for the assessment and award of damages by the county commissioners in laying out highways. *Ibid.*, S. 68.

Under the statute (Rev. Stat., c. 24, §§ 68, 76) an application for a jury for assessment of damages was required to be made within one year from the time of the alteration of the way.—*Bennett v. County Commissioners*, 4 Gray, 359; *Russell v. New Bedford*, 5 Gray, 31.

The selectmen may estimate the damages at the same meeting at which the way is located.—*Higginson v. Nahant*, 11 Allen, 530.

A petition by an owner of land situated near but not adjoining the highway for damages done to land by changes of grade, etc., is to be considered as brought under c. 49, §§ 68, 69, and should be considered by the jury.—*Dana v. Boston*, 170 Mass. 593; *Trowbridge v. Brookline*, 144 Mass. 139.

Location and Bounds.—They shall, upon the representations of ten freeholders that the exact location of a way within their jurisdiction cannot be readily ascertained, ascertain the correct location, erect the necessary bounds, and file a certificate thereof for record. C. 48, S. 101.

They shall erect permanent bounds at the angles and termini of all ways laid out by them. *Ibid.*, S. 104.

The provisions of Stat. 1848, c. 192, are merely directory and not necessary to be complied with in order to a valid location; they more properly relate to acts to be done after the way is located; and compliance therewith need not be stated on the record of laying out of the road.—*Monterey v. County Commissioners*, 7 Cush. 394.

A city council has no jurisdiction of an application to locate anew a road or to ascertain the correct location thereof, and erect the necessary bounds, unless the same is signed in the manner required by Gen. Stat., c. 43, § 12, or § 87.—*Barnes v. Springfield*, 4 Allen, 488.

Materials for Construction and Repairs.—They may select and lay out land from which may be taken materials for the construction, repair, or improvement of streets or ways, and may lay out ways necessary for access thereto. *Ibid.*, S. 105.

Under Stat. 1869, c. 237, § 1, any earth, gravel, or stones suitable for the purpose mentioned, and capable of being dug out of the ground and removed by ordinary excavation, may be taken.—*Hatch v. Hawkes*, 126 Mass. 177.

Monuments, Erection of.—The selectmen or road commissioners, shall cause permanent bounds to be erected at the termini and angles of all ways laid out by them. Such bounds shall be of stone, not less than three feet long, two feet of which at least shall be set in the ground, or of stone not less than three feet long with holes drilled therein and filled with lead placed a few inches below the traveled part of the way, or if stone bounds are impracticable, a heap of stones, a living tree, a permanent rock, or the corner of an edifice, as said officers may determine. *Ibid.*, S. 104.

Private, Prohibit Use.—If the public safety so requires they shall close or use other means to caution the public against entering ways opened and dedicated to public use which have not yet become public ways. *Ibid.*, S. 99.

A city was held liable for the damage caused by a person falling into an excavation made in the course of repairing a municipal building, on a foot path by which the public was allowed to pass, which was left unguarded.—*Oliver v. Worcester*, 102 Mass. 489.

Under this statute a town is not authorized to close a private way leading from a highway into the grounds of an adjoining proprietor, nor is it responsible for damages caused by defect in such private way.—*Warner v. Holyoke*, 112 Mass. 362.

Where a private way has become public a town is liable for a defect in the public way between the part wrought for public travel and the entrance of the private way, unless it has cautioned the public against entering upon such private way.—*Paine v. Brockton*, 138 Mass. 564.

Refusal to Lay Out.—If the selectmen or road commissioners unreasonably refuse or neglect to lay out or alter a town way or private way when requested in writing by one or more inhabitants, the county commissioners may lay out or alter such way. C. 48, S. 74.

An action lies against the selectmen to recover for the services of an officer employed by them without the authority of the town to summon a jury to reduce the damages estimated by the county commissioners upon the laying out of a town way.—*Baker v. Thayer*, 3 Met. 312.

The county commissioners may lay out a way when the selectmen unreasonably neglect or refuse to lay out such way, even where it will form a link to connect two adjoining towns.—*Monterey v. County Commissioners*, 7 Cush. 394; *Brown v. County Commissioners*, 12 Met. 208.

Before the county commissioners have power to lay out a town way they must determine that the selectmen have unreasonably neglected or refused to lay out the same; and their record should distinctly state such adjudication.—*Belchertown v. County Commissioners*, 11 Cush. 189.

County commissioners have discretion to lay out part only of a town way if they are of opinion that the remainder has become unnecessary.—*Hill v. Co. Comrs.*, 4 Gray, 414.

Repairs, Damages Caused by.—If an owner of land adjoining a way who sustains damage in his property by an act done for the purpose of repairing the way, files his petition for compensation with the selectmen or road commissioners, after the commencement and within one year after the completion of the work, they shall, within thirty days after the filing of said petition, unless the parties otherwise agree in writing, determine the amount of his damages and deduct therefrom the benefit, if any, to the complainant for such repair. C. 51, S. 15.

A surveyor has authority to dig down or raise a street; and, if he does it with discretion and not wantonly, a party injured cannot maintain an action against him. Such digging down or raising is not an alteration within the meaning of the statute.—*Callender v. Marsh*, 1 Pick. 418; *Benjamin v. Wheeler*, 8 Gray, 409.

A highway surveyor has authority to raise a highway in the course of his repairs, and so to render the town liable for damages to the adjacent landowner without any express authority from the town or the selectmen.—*Mitchell v. Bridgewater*, 10 Cush. 411.

The owner of land adjoining a highway is not entitled to damages sustained by raising the way until the act of raising is done.—*Page v. Boston*, 106 Mass. 84; *Brown v. Lowell*, 8 Met. 172.

The damage to be recovered from the laying out of a highway below the level of an adjoining house and land is not confined simply to the injury caused to the right of lateral support for the soil exclusive of the building, but includes all the damage to the property.—*Hartshorn v. County of Worcester*, 113 Mass. 111.

A town is liable for an injury sustained by an owner of land adjoining the highway caused by the surveyor lowering the grade between the traveled parts of the way and the adjoining land, whether the repairs are made opposite to such estate or on another part of the way.—*Burr v. Leicester*, 121 Mass. 241.

Under Stat. 1871, c. 158, as amended by Stat. 1873, c. 51, it was held that the petition of a landowner for an assessment of damages occasioned by a change of grade in a highway, the town having accepted the statute by electing road commissioners, should be presented to the commissioners and not to the selectmen.—*Walker v. West Boylston*, 128 Mass. 550.

Where a highway surveyor, having exhausted the appropriation for his district, makes repairs on the way within the ordinary scope of his authority, but without the written consent of the selectmen, the town, although not bound to pay therefor, is liable for damages thereby caused to an abutter.—*Allen v. Gardner*, 147 Mass. 452.

The owner of land adjoining a town way, who sustains damage in his property, is entitled to compensation under the statute, if, by raising the grade of the way in making repairs, besides an obstruction to his access to the land, the surface water is made to flow upon the land or to remain thereon rendering it wet, unhealthy, and less valuable.—*Woodbury v. Beverly*, 153 Mass. 245.

Change of grade and "specific repairs" of a way distinguished.—*Albro v. Fall River*, 175 Mass. 590.

Cases arising under orders by the municipal authorities for specific repairs.—*Sisson v. New Bedford*, 137 Mass. 255; *Sullivan v. Fall River*, 144 Mass. 579; *Bigelow v. Worcester*, 169 Mass. 390; *Underwood v. Worcester*, 177 Mass. 173.

Superintendent of Streets; Duties.—In a town which has not authorized the election of road commissioners or surveyors of highways, the selectmen shall as soon after the annual town meeting as may be, in writing, appoint a superintendent of streets, who shall receive such compensation as they or the town determine, and shall be removable by them when the public interest requires. It is his duty, under the direction of the selectmen, to have full charge of all repairs and labor upon streets, ways, bridges, and sidewalks, and, if no other provision is made, of repairs upon sewers and drains; and in such matters he shall have the powers, perform the duties, and be subject to the liabilities and penalties of surveyors of highways and road commissioners. C. 25, SS. 85, 86.

Unused Poles, Removal of.—They may cause the removal from public ways and places, of unused poles, wires, and other appliances at the expense of the owners thereof. C. 53, S. 5.

Use by Corporations, Permits for.—They may grant permits allowing gas companies and certain other corporations to dig up and open ground in the ways of the town so far as necessary to accomplish the objects of such corporation; but the selectmen may regulate, restrict, and control all acts and doings of such company or corporation which may affect the health, convenience, or property of the inhabitants. C. 110, SS. 76, 78.

Electric Light Company.—They may grant permits allowing an electric light company the use of streets and highways of the town, such use to be under the direction of the selectmen, who may regulate, re-

strict, and control all acts of said company which may affect the health, safety, convenience, or property of the inhabitants of the town. No other person, company, or corporation shall have the like use of the public ways of the town except street railway companies, without the consent of the selectmen, granted after notice to all parties interested at a public hearing. C. 121, SS. 17, 19, 26.

The statute prohibits the maintenance and use of all wires by the offending company.—*Attorney-General v. Walworth Light, etc., Co.*, 157 Mass. 86.

Weights and Measures, Standard.—They may require the treasurer to provide sets of apothecaries' weights and measures, to be used as standards, at the expense of the town. C. 62, S. 14.

WEIGHTS AND MEASURES, SEALERS OF.

The selectmen are required annually, in March or April, to appoint one or more sealers of weights and measures, or one sealer and one or more deputies to act under the direction of the sealer; and they may also appoint gaugers of liquid measures, and may, at any time, remove such officers and appoint others in their places.

It is the duty of a sealer of weights and measures to make annual tests of the weights, measures, or balances, and hay and coal scales, which are used in his town, and to adjust the same. For further details the reader is referred to the statutes. C. 62, SS. 18-36.

Wood and Bark, Measurers of.—When authorized by a vote of the town, the selectmen may appoint measurers of wood and bark. C. 57, SS. 30, 75, 79.

TAXATION.

See "Assessors of Taxes."

TOWN CLERK.

Election.—The town-clerk is elected by ballot at the annual town meeting in every year, from the inhabitants of the town, to serve during the year; unless the town, having accepted provisions of law granting authority therefor, shall choose a clerk for the term of three years. In the latter case he may also serve as clerk of such officers, boards, and departments as the town may determine. C. 11, SS. 334, 335, 343.

Official Oath.—If present at the meeting at which he is elected, the town-clerk shall forthwith be sworn either by the moderator or by a justice of the peace, and shall enter at once upon the performance of his duties. *Ibid.*, S. 346.

Clerk Pro Tempore.—If at a town meeting there is a vacancy in the office of town-clerk, or if he is absent, the meeting shall elect, by ballot, a clerk *pro tempore*. If in case of a vacancy, other duties than those required of a town clerk at a town meeting are to be performed, or if

he is unable to perform them, the selectmen may, in writing, under their hands, appoint a clerk, who shall be sworn and shall in the performance of such duties have the same powers and be subject to the same requirements and penalties as the town-clerk, and he shall immediately make a record of his election or appointment. *Ibid.*, S. 356.

Assistant Town Clerk.—The town clerk may, in writing, appoint an assistant clerk, who shall be sworn to the faithful performance of his duties; and a record shall be made of the appointment and oath. The assistant town-clerk may be a woman, and may, in the absence of the clerk, perform his duties and have the powers and be subject to the requirements and penalties applicable to him. The assistant clerk shall not receive a salary from the town, but his compensation, if any, shall be paid by the clerk, to whom all fees received by the assistant shall be paid. C. 25, S. 62.

Bond.—The clerk shall, within ten days after his election and qualification, give bond to the town with sureties to be approved by the selectmen for the faithful accounting for all fees received by him for dog licenses. C. 102, S. 134.

Act or Resolve, Action on, Return.—He shall make a return to the secretary of the commonwealth of the action or failure to act by the town upon an act or resolve of the general court, in certain cases. C. 8, S. 3.

Administer Official Oaths.—He shall administer the oaths of office to all town officers who apply to him to be sworn, and shall make a record thereof and of the oaths of office taken before justices of the peace of which certificates are filed. C. 25, S. 60.

Attachment of Bulky Articles.—A certified copy of a writ of attachment of bulky articles or goods, may be deposited in the office of the clerk of the town in which it is made.

The clerk shall receive and file such copies, keep them safely in his office, and enter a memorandum thereof in the books kept for recording mortgages of personal property. His fee for the service shall be twenty-five cents. C. 167, SS. 45, 46.

Before the enactment of Rev. Stat., c. 90, § 33, an attachment of a building, which was decreed to be personal property, made in the manner in which real estate is attached, was *held good*.—*Ashmun v. Williams*, 8 Pick. 402.

Attachment of bulky articles in a factory by public declaration of the officer, locking the building and delivery of the key to an agent, *held good*.—*Shephard v. Butterfield*, 4 Cush. 429.

Attachment of plate glass in boxes and unpacked in the mode prescribed by the statute.—*Polley v. Lenox Iron Works*, 4 Allen, 331; *Sanderson v. Edwards*, 16 Pick. 144; *Reed v. Howard*, 2 Met. 36; *Arnold v. Stevens*, 11 Met. 258.

Tobacco stored in barns and afterwards packed in boxes and locked up in a building was attached and the attachment *held valid* against a subsequent mortgage and proceeding in bankruptcy.—*Bank v. Jewett*, 119 Mass. 241.

Attachment of railroad cars upheld.—*Hall v. Carney*, 140 Mass. 131.

Lathes and planers left in the owners' use.—*Higgins v. Drennan*, 157 Mass. 384.

The court took judicial notice of the fact that fifty tons of hay was too bulky to be removed and upheld the attachment, although the officer's return did not state the reason for not removing the hay.—*Davis v. Leary*, 177 Mass. 526.

Births, Marriages, and Deaths, Registry.—The town clerk is the registrar of vital statistics in all the towns of the commonwealth, except that towns containing more than ten thousand inhabitants may choose or provide for the appointment of a person other than the clerk to be registrar. For the particulars relating to the same, the reader is referred to the statutes. C. 29, SS. 1-29.

Marriages, Notice of Intention.—Notices of intention of marriage are required to be entered in the office of the clerk or registrar of the town or city in which the parties dwell, or if they do not dwell in the commonwealth, in the office of the clerk or registrar of the city or town in which they propose to have the marriage solemnized.

The clerk or registrar may require such notice to be given to him in writing on blanks to be furnished by him, and may require the party giving such notice to make oath before him to the truth of the statements therein. He is not required, however, to receive such notices on the Lord's day, nor on legal holidays, nor at any place except his office.

He shall not, except in the case of minors authorized by a judge of probate as provided by law, receive a notice of intention of marriage of any male under the age of eighteen years, nor of any female under the age of sixteen years. C. 151, SS. 16-20.

Certificate of Intention, License.—The town-clerk shall deliver to the parties a certificate signed by him, specifying the time when notice of the intention of marriage was entered with him and all facts relative to the marriage which are required by law to be ascertained and recorded, except those relative to the person by whom the marriage is to be solemnized. *Ibid.*, S. 23.

Minors.—The statutes impose certain restrictions upon the issuance of licenses to marry to persons under age. For particulars the reader is referred to the statutes. *Ibid.*, SS. 25-27.

Refusal of Certificate.—The clerk may refuse to issue a certificate, if he has reasonable cause to believe that any of the statements contained in the notice of intention of marriage are incorrect; but he may, in his discretion, accept depositions under oath made before him which shall be sufficient proof of the facts therein stated to authorize the issuing of a certificate. He may also dispense with the statement of any facts required by law, if they do not relate to or affect the identification or age of the parties, if he is satisfied that the same cannot with reasonable effort be obtained. *Ibid.*, S. 28.

Correction of Certificates.—If a certificate of marriage is found upon its return to the clerk to have been incorrectly filled out by the

person who solemnized a marriage under it, the clerk shall have it corrected and shall enforce the penalties, if any, provided by law relative thereto. Such imperfect certificates shall be recorded and indexed by the clerk. *Ibid.*, S. 33.

Burial Permits.—He may issue a permit for the burial of the body of a person who has died in the town, if there is no board of health. C. 78, S. 38.

Constables' Names Returned.—He shall, except in the county of Suffolk, within seven days after the election or appointment and qualification of a constable, make return of his name to the clerk of the courts of the county. C. 25, S. 63.

Dogs, Licenses.—Dogs three months old or over shall annually, on or before the thirtieth day of April, be registered, numbered, described, and licensed for one year from the first day of May following in the office of the clerk of the town in which the dog is kept. C. 102, S. 128.

A street railway corporation held responsible for injuries inflicted by a dog kept on their premises.—*Barrett v. Railway Company*, 3 Allen, 101.

The authority to regulate the keeping of dogs is within the police power vested in the legislature by the constitution of the commonwealth.—*Blair v. Forehand*, 100 Mass. 136.

A license describing a dog only as a "male dog" is insufficient. So a license to keep a "yellow and white" dog name "Dime" will not authorize the keeping of a black Newfoundland dog named "Nigg." The description must be definite and accurate enough to furnish the means of identifying the dog which the license protects.—*Commonwealth v. Brahany*, 123 Mass. 247.

If one at any time keeps a dog which is not registered, numbered, described, and licensed according to law he is subject to a penalty.—*Commonwealth v. Coates*, 169 Mass. 355.

Hydrophobia.—Every license issued to the owner of a dog shall have a description of the symptoms of hydrophobia printed thereon, to be supplied by the secretary of the state board of health to the town clerk upon application therefor. C. 102, S. 132.

Records; Returns.—The clerk shall issue such licenses, receive the money therefor, and pay it into the treasury of the county on or before the first day of June and December in each year, retaining to his own use twenty cents for each license and returning to such treasury a sworn statement of the amount of money thus received and paid over by him. He shall keep a record of all such licenses, of the names of the owners of the dogs licensed, and of the names, registered numbers, and descriptions of all such dogs. *Ibid.*, S. 133.

Transfers.—In case of transfer of a dog license, it shall be again recorded by the clerk of the town in which such dog is kept. *Ibid.*, S. 136.

In case of a change of residence of the owner of a licensed dog, the license should be recorded in the town to which he removes and where the dog is kept.—*Commonwealth v. Palmer*, 134 Mass. 537.

Earnings, Future, Assignment.—To be valid against trustee process, an assignment of future earnings must be recorded in the office of the

town-clerk of the town where the assignor resides, before service of the writ upon the trustee. C. 189, S. 34.

The certificate of the city clerk, endorsed upon the instrument of assignment, is conclusive between the claimant and the attaching creditor that it was recorded at the time named therein.—*Fuller v. Cunningham*, 105 Mass. 443; *Tracy v. Jenks*, 15 Pick. 465; *Ames v. Phelps*, 18 Pick. 314.

The fact that an assignment of future earnings has been recorded is not constructive notice of the assignment to the employer.—*Corbett v. Fitchburg R. R. Co.*, 110 Mass. 204.

An assignment not recorded is invalid against trustee process.—*Somers v. Keliher*, 115 Mass. 165.

An assignment of future wages for a certain time and recorded need not state what it was intended to secure, and is not limited by the formal recital of consideration.—*Murphy v. Murphy*, 121 Mass. 168.

Election Returns, Canvass.—In towns divided into voting precincts, the town-clerk and the board of registrars, upon receipt of the returns from the several precincts, shall forthwith canvass the same and declare the result, and notify the persons chosen town officers as provided in section 347. C. 11, S. 354.

Highways and Bridges, Acceptance of Statutes of.—The clerk shall send a certified copy of the vote of acceptance by a town of sections 58 to 64 of chapter 48, R. L., concerning highways and bridges, to the county commissioners, within ten days after such acceptance. C. 48, S. 63.

Index Recorded Instruments.—He shall make and keep an index of instruments entered with him which are required by law to be recorded. It shall be divided into five columns, with appropriate headings, for recording the date of reception, the names of parties, and the book and page on which each instrument is recorded, and shall be open for public inspection. C. 25, S. 64.

Intelligence Offices, Keepers of, etc.—Licenses to keepers of intelligence offices, junk dealers, pawnbrokers, keepers of billiard saloons, pool or sippio tables, bowling alleys, skating rinks and picnic groves shall be signed and recorded by the clerk of the town in which they are granted. C. 102, S. 186.

Itinerant Vendors, Licenses.—A local license may be issued by the town clerk to an itinerant vendor to sell goods, wares, and merchandise within a town by authorization of the selectmen, and upon payment of the fee prescribed by law and proof of payment of all other license fees required, he shall record the state license of such vendor in full. C. 65, S. 5.

Jurors.—Jurors are drawn in towns by the town-clerk and selectmen, who meet at the clerk's office or at some other public place appointed for the purpose, and if the clerk be absent, the selectmen may proceed without him. C. 176, S. 19.

See also "Selectmen."

Liquor Licenses.—Licenses for the sale of intoxicating liquors in towns are signed by the chairman of the selectmen and town clerk and recorded by the town clerk. The clerk is required within thirty days after a vote has been taken by the town on the question of license, to transmit a true statement thereof to the secretary of the commonwealth, and annually in November to make a return to said secretary of the number of licenses issued, the amount of money received therefor, and the number of licenses revoked, if any. C. 100, S. 10.

The mayor in signing the licenses, like the city clerk, performs a merely ministerial duty.—*Braconier v. Packard*, 136 Mass. 52.

A certificate authorizing the licensee to change his place of business must be authenticated by the signatures of the chairman of the selectmen and of the town clerk.—*Commonwealth v. Merriam*, *Ibid.* 433.

In the notice of the hearing, as well as in the license itself, the names of partners should be given in full.—*Commonwealth v. Beaver*, 150 Mass. 389.

The licensing board are public officers, and the town is not answerable for their acts.—*McGinnis v. Medway*, 176 Mass. 68.

Militia Enrollment, Returns.—Certified copies of the lists of persons liable to be enrolled in the militia made out annually by the assessors and placed in the hands of the town clerk, shall be filed with the records of the town, and annually in May, June, or July the clerk shall transmit returns of the militia thus enrolled to the adjutant-general. C. 16, S. 8.

Mortgages of Personal Property.—Mortgages of personal property are required to be recorded on the records of the town in which the mortgagor resides when the mortgage is made, and in which he then principally transacts his business or follows his trade or calling. If he resides out of the commonwealth and the property is within the commonwealth, when the mortgage is made, it shall be recorded on the records of the town in which the property then is.

It is the duty of the town-clerk to record such mortgages in books kept for the purpose, noting the time when they are received; and such mortgages shall be held to be recorded at the time when they are left in the clerk's office for that purpose. C. 198, SS. 1, 3.

A bill of sale held to be a mortgage. Since the enactment of Stat. 1832, c. 157, § 1, the recording of a mortgage of personal property makes it valid against all persons.—*Homes v. Crane*, 2 Pick. 607; *Harding v. Eldridge*, 186 Mass. 42.

The statute applies only to goods and chattels capable of delivery, not to defeasible or conditional assignments of choses in action.—*Marsh v. Woodbury*, 1 Met. 436; *Bank v. Abbott*, 181 Mass. 535.

When a mortgage has been recorded in the town where the mortgagor resided and had his place of business it is not necessary, on his removal to another town, to record it in that town also.—*Brigham v. Weaver*, 6 Cush. 298.

The rule does not apply to mortgages made in another state by a citizen of this state. The *lex loci contractus* governs.—*Langworthy v. Little*, 12 Cush. 111.

The mortgagee of property, although his mortgage is not recorded, may maintain an action of tort against one who, without any title, takes the property from the possession of the mortgagor.—*Pratt v. Harlow*, 16 Gray, 379.

An unrecorded mortgage of personal property, which is not delivered to, and retained by the mortgagee, is not valid against the assignee in insolvency of the mortgagor.—*Bingham v. Jordan*, 1 Allen, 373.

Possession of the mortgaged property by the mortgagee before and until the title of a third person accrues is sufficient as against such title.—*Wright v. Tetlow*, 99 Mass. 397.

The mortgagee's title to the property is good as against a collector of taxes who has distrained it.—*Fuller v. Day*, 103 Mass. 481.

An unrecorded prior mortgage was held good as against subsequent mortgages given expressly subject to it.—*Howard v. Chase*, 104 Mass. 249.

The certificate of the city clerk, endorsed upon the instrument of assignment, is conclusive between the claimant and attaching creditor that it was recorded at the time named therein.—*Fuller v. Cunningham*, 105 Mass. 442; *Tracy v. Jenks*, 15 Pick. 465; *Ames v. Phelps*, 18 Pick. 314; *Jacobs v. Denison*, 141 Mass. 117.

A mortgage placed on record before the date written therein is duly recorded and valid within the statute limiting the time within which a mortgage shall be recorded.—*Amerige v. Hussey*, 151 Mass. 300.

An unrecorded agreement to give a chattel mortgage stands no better than an unrecorded mortgage against the purchaser of the goods.—*Smith v. Howard*, 173 Mass. 89.

Of two mortgages executed on the same day the one first recorded has priority irrespective of the order of execution.—*Berry v. Levitan*, 181 Mass. 73.

Oleomargarine, Licenses; Registry.—In towns, in which there is no inspector of milk, licenses to peddlers of oleomargarine are issued by the town clerk; and dealers are required before offering the same for sale to register their names and proposed places of sale in the books of the town clerk. C. 56, SS. 39, 40.

Police, Return List of.—The clerk of each town in which a chief of police is appointed, shall, within one week after such appointment, notify the commissioners of prisons of the name of the person so appointed; and the clerk of each town not having a chief of police shall annually, on the first day of October, send to the commissioners of prisons the names of all the police officers and constables in such town. C. 108, S. 38.

Preside at Town Meetings.—Until the election of a moderator the town clerk shall preside at every town meeting. C. 11, S. 331.

It is the duty of the clerk to sort and count the votes given in for moderator as a necessary incident to his office.—*Dodds v. Henry*, 9 Mass. 262.

Until a moderator is legally chosen the clerk is the proper presiding officer.—*Attorney-General v. Simonds*, 111 Mass. 260.

Where a town clerk and moderator were duly elected and resigned after the clerk had entered the fact of election on his record, the selectmen afterwards made written appointment of a clerk to fill the vacancy. Held, that the appointment was invalid, but the appointee was clerk *de facto*, and his subsequent acts were valid.—*Attorney-General v. Crocker*, 138 Mass. 214.

Public Documents.—He is the custodian of the books, pamphlets, and other public documents belonging to the town and furnished by the secretary of the commonwealth under various provisions of the law. C. 9, SS. 3, 8, 11.

Records; Inks and Appliances.—Town clerks and all other persons having the care or custody of public records are forbidden to use or permit to be used upon any public record written by them, or under their direction, any ink except ink furnished by the commissioner of public records. They shall not use or permit to be used upon such records any ribbon, pad, or other device used for printing by type-writing machines, or any ink contained in such ribbon, pad, or device, except such as has been approved by the commissioner. C. 35, SS. 8, 9.

Custody of Ancient Records.—Every town clerk shall have the custody of all records of proprietors of towns, townships, plantations, or common lands, if the towns, townships, plantations, or common lands to which such records relate, or the larger part thereof are within his town, and the proprietors have ceased to be a body politic. He shall also have the custody of all other public records of the town of which he is clerk if no other disposition of such records is made by law or ordinance, and shall certify copies thereof. *Ibid.*, S. 12.

Church Records.—If a church, parish, religious society, monthly meeting of the people called Friends or Quakers, or any similar body of persons associated together for the purpose of holding religious meetings, shall cease for two years to hold such meetings, the records or registries of such body, except records essential to the control of property or trust funds, shall be delivered to the clerk of the town in which such body is situated, and such clerk may certify copies thereof. *Ibid.*, S. 13.

Open to Inspection.—Every person who has the custody of any public records, shall at reasonable times permit them to be inspected and examined by any person, under his supervision, and shall furnish copies thereof on the payment of the fees prescribed by law or by the ordinances or by-laws of his town. *Ibid.*, S. 17.

All such records shall be kept in the rooms in which they are ordinarily used, and so arranged that they can be conveniently examined and referred to; and when not in use they shall be kept in the fire-proof rooms, vaults, or safes provided for them. *Ibid.*, S. 19.

Preservation of Worn Records.—Every person who has the custody of any public record-books of a town shall, at its expense, cause them to be properly and substantially bound, and rebound when worn. He shall have any such book, which may have been left incomplete, made up and completed from the files and usual memoranda, so far as practicable. He shall cause fair and legible copies to be seasonably made of any book which is worn, mutilated, or illegible, or the same to be repaired or renovated. He may cause such repairs or copies to be made by said commissioner at the expense of the town. He shall attest such completed or copied books, and shall certify that they have been made from such files and memoranda or are copies of the original books. Such books shall then have the force of original records. *Ibid.*, S. 16.

Railroad Subscription, Vote for.—The town clerk shall transmit to the secretary of the commonwealth and to the board of railroad commissioners a certified copy of any vote of the city or town to subscribe for the stock of a railroad corporation or to pledge its credit, or grant aid to the same, within thirty days after the day on which the vote is taken; and if he neglect or refuse so to do, he shall be punished by a fine of not less than five nor more than fifty dollars. C. 111, S. 54.

Registrar of Voters.—The town clerk in towns having three hundred voters registered for the annual state election, with three other persons who are appointed by the selectmen, constitute the board of registrars of voters, and in towns having a less number of voters, the selectmen and town clerk constitute such board. In such cases he acts as the clerk of the board, keeps a record of its proceedings, and causes such notices as the registrars may require to be served and posted. C. 11, SS. 25, 26, 30.

Steam Engines and Furnaces.—In case the municipal authorities of a town make any order in regard to a steam engine or furnace, the town clerk shall deliver a copy of such order to a constable, who shall serve the same and make return thereof to such clerk within three days thereafter. C. 102, S. 74.

Stray Beasts, Lost Goods.—When called upon by the finder of lost goods or stray beasts, as required by law, the town clerk is required to issue a warrant directed to two disinterested persons, appointed by him, requiring them to appraise the goods or beasts at their true value, upon oath. C. 94, SS. 2, 3.

Summon Officers-Elect to qualify.—He shall forthwith after the election or appointment of town officers required to take an oath of office, make a list of such officers, not sworn by him or by the moderator, and deliver it with his warrant to a constable, requiring him within three days to summon each such person to appear and take the oath of office within seven days after such service upon him; and the constable shall, within said seven days, make return thereof to the town clerk. A certificate of the taking of such oath shall be filed with the town clerk. C. 11, S. 347.

There is no provision of law requiring the official oath of a collector to be recorded. It is sufficient if he is sworn before he enters upon the discharge of the duties of his office.—*Howard v. Proctor*, 7 Gray, 131; *Pease v. Smith*, 24 Pick. 122.

Town Reports Sent to State Library.—One copy or more of the annual report and of any special report of a town shall annually, on or before the last day of April, be transmitted by the town clerk to the state library, and until such transmission the publications distributed by the commonwealth shall be withheld from the town. C. 25, S. 30.

Votes at Town Meetings, Record.— He shall record all votes passed at the meeting at which he is elected, and at all other town meetings held during his term of office. *Ibid.*, S. 59.

The record of the vote of a town accepting the report of the selectmen, defining the limits of certain school districts, and the filing of the report, *held* sufficient to establish a school district. It was not necessary to record the report.—*Howard v. Stevens*, 3 Allen, 409.

Where the town records do not show that a two-thirds vote was passed in favor of re-establishing the school district system parol evidence is not admissible to prove it.—*Andrews v. Boylston*, 110 Mass. 214; *Bennett v. New Bedford*, *Ibid.* 433.

A town-clerk has power to amend his record of the proceedings at a town meeting, and the record so amended cannot be varied or controlled by parol evidence.—*Halleck v. Boylston*, 117 Mass. 469; *Wheeler v. Carter*, 180 Mass. 388.

The town-clerk cannot, by inserting in his records any statements of facts or opinions which are not properly matters of record, make such statements evidence for or against the town.—*Judd v. Thompson*, 125 Mass. 555.

Ways and Bridges, Action on Certified.— Within two weeks after a town has taken final action as to the alteration, relocation, widening, or making specific repairs upon a highway or county bridge, under the provisions of the preceding section, the town clerk shall send a certified copy of the record of such final action to the county commissioners. C. 48, S. 59.

TOWN TREASURER.

Election.— The treasurer is chosen by ballot at the annual town meeting to serve during the ensuing year, and may be appointed collector of taxes. C. 11, S. 334.

Bond; Duties.— The town treasurer shall give bond for the faithful performance of his duties in a sum and with sureties approved by the selectmen, shall receive and take charge of all money belonging to the town, and shall pay over and account for the same according to the order of the town or of the authorized officers thereof. He shall have the authority given to an auditor by section 80 and shall annually render a true account of his receipts and disbursements, and a report of his many official acts. C. 25, S. 72.

He may in his own name and official capacity prosecute actions upon bonds, notes, or other securities given to him or to his predecessors in office; and unless otherwise provided, he shall prosecute for all fines and forfeitures inuring to the town.

Likewise his successor in office. *Ibid.*, S. 73; C. 171, S. 19.

A bond, given to the selectmen of a town and their successors in office for the faithful performance of the duties of treasurer and collector of the town, is not a bond required by law, and no action can be maintained thereon in the name of the successors of the obligees.—*Stevens v. Hay*, 6 Cush. 229.

A town treasurer and collector is liable for a breach of his bond in not paying over money collected by him, although the same is stolen from him without his fault.—*Hancock v. Hazzard*, 12 Cush. 112.

A city treasurer had no authority to borrow money; hence a bank which lent him money on his representations could not recover it from the city.—*Bank v. Lowell*, 109 Mass. 214.

The making of complaints under the statute is not confined to town treasurers.—*Commonwealth v. Gay*, 153 Mass. 211; *Commonwealth v. McDonnell*, 157 Mass. 407.

Prosecutions.— He may prosecute for trespasses committed on a public building or enclosure belonging to the town; and if a public building is owned partly by the town and partly by the county, such prosecution may be made either by the town or county treasurer, whoever first institutes the same.

The chief or superintendent of police, or other police officer of a town, or the town treasurer, may prosecute for all fines and forfeitures inuring to the town, and may also prosecute for trespasses committed in any public building or enclosure within the town limits. *Ibid.*, S. 74.

Collector of Taxes.— A town treasurer who acts as collector of taxes may appoint deputies, who shall give bonds to the satisfaction of the selectmen for the faithful performance of their duties; and such collector and deputies shall have the powers of collectors of taxes. A treasurer acting as collector may issue his warrant to the sheriff of the county or to his deputy, or to any constable of the town, directing them to distrain the property or take the body of any person delinquent in the payment of taxes, and may proceed in the same manner as collectors. *Ibid.*, S. 75.

If a town appoints its treasurer the collector of taxes, he may issue his warrants to the sheriff of the county, or his deputy, or to any constable of the town, returnable in sixty days, requiring them to collect any or all taxes due. Such warrants shall be substantially in the same form, and shall confer the same powers as warrants by assessors to collectors. C. 13, S. 79.

A deputy collector appointed by a collector, who is also town treasurer, may execute a warrant for the collection of taxes, although the warrant be directed to the collector only.—*Aldrich v. Aldrich*, 8 Met. 102.

Prior to the enactment of Acts 1893, c. 423, § 16, the vote of a town authorizing a town treasurer to perform the duties of a collector of taxes was held to be valid and sufficient.—*Sherman v. Torrey*, 99 Mass. 472; *Commonwealth v. Wentworth*, 145 Mass. 53.

Under a vote by a town to pay a person a certain sum for collecting taxes the ensuing year, and that he be a constable with the authority given by law to town treasurers, he had no authority to issue a warrant for the arrest of a person delinquent in the payment of a tax assessed the previous year.—*Smith v. Keniston*, 100 Mass. 172.

A bond executed to a town by its collector of taxes and placed in the hands of the town treasurer may be enforced against the collector and his sureties, without proof of its approval by the selectmen, or of its delivery.—*Wendell v. Fleming*, 8 Gray, 613.

This court cannot compel the board of aldermen of a city to approve a bond, which is required by law to be a "bond with sureties to their satisfaction."—*Keough v. Holyoke*, 156 Mass. 403.

Ineligible to Other Offices.— The town treasurer shall not be eligible as a commissioner of the town sinking fund, and the acceptance by a commissioner of the office of treasurer shall operate as a resignation of

the former office. If the town treasurer is chosen treasurer of the commissioners, his bond shall apply to and include duties performed under the provisions of this chapter. C. 27, S. 14.

He cannot be a park commissioner. C. 28, S. 1.

Vacancy, how Filled.— If the office of treasurer become vacant, or if the treasurer is unable to perform his duties, the selectmen may, in writing, appoint a treasurer *pro tempore* to hold office until another is chosen by the town and qualified or the disability is removed.

If the treasurer does not give bond within ten days after his election or appointment, the selectmen may declare the office vacant and appoint another in his place. C. 11, S. 359.

Burial Grounds, Deposits for Care of.— Funds, money, or securities deposited with the town treasurer for the preservation, care, improvement, or embellishment of any public or private burial place in the town shall be entered upon the books of the treasurer and held in accordance with the provisions of the ordinances or by-laws relative thereto. C. 78, S. 18.

A bequest for the care and keeping of the testator's burial lot in a Roman Catholic cemetery is valid; and in general, bequests for the perpetual care of burial lots in cemeteries, whether they are public burial places or not, to cities, towns, and savings banks to act as trustees of such trust, are upheld.— *Green v. Hogan*, 153 Mass. 462; *Bartlett, Petitioner*, 163 Mass. 513; *Morse v. Natick*, 176 Mass. 513.

County Treasurers, Payments to.— Town treasurers, when making payments of public funds to county treasurers, except the treasurer of the county of Suffolk, shall deliver therewith a statement in such form as may be prescribed by the controller of county accounts, showing the date, amount, and purpose of said payments, and shall forthwith transmit a duplicate thereof to said controller. C. 21, S. 42.

Court Fees and Fines.— Clerks of police, district, and municipal courts, except the municipal court of the city of Boston, justices of such courts as have no clerk, and trial justices, are required at certain times specified in the statutes to account for and pay over to town treasurers of their towns all fines, forfeitures, and other moneys received by them which by law are payable to such towns, and render to such treasurers a detailed account on oath of the same. C. 160, S. 48; C. 161, S. 59.

Crime, Detection, Rewards.— Rewards offered for the detection of crime shall be paid by the treasurer upon the warrant of the selectmen of the town. C. 217, S. 10.

Dog Fund.— Each town treasurer shall keep an accurate and separate account of all money received and expended by him under the provisions of this chapter relating to dogs. C. 102, S. 135.

Enginemen, Payments to.— The town treasurer shall, after deducting all taxes due from enginemen, pay the amount certified to him by the assessors as due, to such enginemen; or, if minors, to their

parents, masters, or guardians; and upon refusal of the treasurer to pay any sums so certified and returned, the person entitled may recover such amount in an action of contract. C. 32, S. 34.

Fire Districts, Duties.—The town treasurer shall have the powers and perform the duties relative to the collection of the money voted by a fire district as he has and exercises relative to town taxes. *Ibid.*, S. 63.

Intoxicating Liquors; Licence; Bond.—A license shall not be issued until the license fee has been paid to the treasurer of the town by which it is to be issued, nor until he has received a satisfactory bond, payable to him as such treasurer, in the sum of one thousand dollars, signed by the licensee and sufficient surety or sureties, who shall be jointly and severally liable, and conditioned for the payment of all costs, damages, and fines which may be incurred by a violation of the provisions of this chapter. C. 100, S. 42.

License Fees.—The treasurer of a town shall, within thirty days after the receipt of money for licenses for the sale of intoxicating liquors, make a return of the amount thereof to the treasurer and receiver-general, and at the same time shall pay to him one-fourth of the amount so received, and for neglect thereof he shall pay interest at the rate of six per cent per annum on the amount of such receipts from the time they become due until they are paid. *Ibid.*, S. 45.

Library Trustees, Treasurer.—The town treasurer shall act as treasurer of the board of trustees of the town library until the town otherwise directs. C. 38, S. 7.

Licenses, Records of.—The town treasurer shall keep records of all licenses upon which the amounts provided in this chapter have been paid to him, with the number of each, the names and residences of the licensees, and the amounts received thereon, and all such records shall be open to public inspection. C. 65, S. 23.

Reimbursed to Shareholder.—The treasurer of a town upon request of a shareholder of a corporation to whom a certificate of exemption from taxes on shares owned by him has been given by the assessors shall pay to the holder of such certificate the amount collected in respect of such shares immediately upon the allowance made to the town under the provisions of this chapter. C. 14, S. 18.

Set-off of Debts Due Taxpayers.—The treasurer or other disbursing officer of any city or town, may, and if so requested by the collector, shall, withhold payment of any money payable to any person whose taxes are then due and wholly or partly unpaid to an amount not exceeding the unpaid tax with interest and costs. The sum withheld shall be paid or credited to the collector, who shall, if required, give a written receipt therefor. C. 13, S. 81.

Ways and Bridges, Surveyor to Pay Over Surplus.—If money remains unexpended in the hands of a surveyor at the expiration of his term of office, he shall pay the same to the town treasurer, and if he fails so to do the treasurer, after demand, may recover the same, with twenty per cent in addition thereto, in an action of contract to the use of the town. C. 51, S. 9.

Weights and Measures, Standard; Duties.—Town treasurers, if so directed by the selectmen, shall, upon request to the treasurer and receiver-general, be provided, at the expense of such towns, with duplicate sets of apothecaries' weights and apothecaries' liquid measures as described in section 6, which shall be used as standards in the respective towns in which they are kept.

The several town treasurers shall, at the expense of their respective towns, provide therein accessible places for the safe and suitable keeping and preservation of the weights, measures, and balances furnished by the commonwealth, which shall be used only as standards. Said treasurers shall have the care and oversight thereof; shall see that they are kept in good order and repair; and if any of them are lost, destroyed, or irreparably damaged, shall, at the expense of the town, replace the same by similar weights, measures, or balances. C. 62, SS. 14, 15.

The duties and responsibilities of the treasurer of each town, with respect to the keeping, care, verification, and use of the standard weights and measures of the metric system, shall be the same as those established by law with respect to other standard weights and measures. C. 63, S. 3.

Tree Warden.—A tree warden is chosen annually at the annual town meeting. He has the care and control of shade and ornamental trees in the public highways and commons of the town and expends all money appropriated for the setting out and maintenance of such trees. Regulations for their care and preservation made by him, approved by the selectmen and posted in two or more public places have the force and effect of town by-laws. He may appoint and remove deputy tree wardens and he and they shall receive such compensation as the town determines or in default thereof as the selectmen shall allow. C. 11, S. 334; C. 53, SS. 6-13.

The care and control of trees given to tree wardens is in substance the same as that which had been exercised by the various town officers, and a tree warden has no power to remove guide-boards from trees used as guide-posts by authority of the town.—*Sharon v. Smith*, 180 Mass. 539.

Village Improvement Societies.—A town may at a town meeting authorize a village or district in such town, if it contains not less than one thousand inhabitants, to organize under a name approved by the town for the purpose of erecting and maintaining street lamps, establishing and maintaining libraries, building and maintaining sidewalks,

or for employing and paying watchmen and police officers, and shall accurately define the limits thereof.

Officers; By-laws.—Such village or district shall have a clerk and a prudential committee, and may have a treasurer and such other officers as it determines, all of whom shall hold office for a term of one year and until others are chosen and qualified in their stead. Such village or district may adopt by-laws to define the manner of calling its meetings and the duties of its officers, may sue and be sued in the name of its inhabitants, and, so far as appropriate, shall be subject to the provisions of sections 51, 52, 55, 59, 61, 62, 63, 67 and 69 of chapter 32 relating to fire districts. C. 25, S. 24.

VOTERS.

Male Voters.—Every male citizen of twenty-one years of age or upwards, not being a pauper or person under guardianship, who is able to read the constitution of the commonwealth in the English language and to write his name, and who has resided within the commonwealth one year and within the city or town in which he claims a right to vote, six calendar months last preceding a state, city or town election, may have his name entered upon the list of voters in such city or town, and shall have the right to vote therein in any such election or in any meeting held for the transaction of town affairs upon complying with the requirements hereinafter set forth; and, except as above provided, no male person shall have his name entered upon the list of voters or have the right to vote, except that no person who is prevented from reading or writing as aforesaid by a physical disability, or who had the right to vote on the first day of May in the year eighteen hundred and fifty-seven, shall, if otherwise qualified, be deprived of the right to vote by reason of not being able so to read or write; and no person who, having served in the army or navy of the United States in the time of war, has been honorably discharged from such service, if otherwise qualified to vote, shall be disqualified therefor on account of receiving or having received aid from any city or town; and further, no person, otherwise qualified to vote for national or state officers shall, by reason of a change of residence within the commonwealth, be disqualified from voting for such officers in the city or town from which he has removed his residence until the expiration of six calendar months from the time of such removal. C. 11, SS. 12, 13.

Persons, otherwise qualified, who have been for two years exempted, by omission or abatement, from payment of taxes on account of age, infirmity, or poverty are not entitled to vote for governor, lieutenant-governor, senators, and representatives under article III of the amendments to the constitution.—*Opinion of Justices*, 11 Pick. 538; *Opinion of Justices*, 5 Met. 591.

Though a tax assessed upon one person is paid by another, whom he acknowledges afterwards acted as his agent, he thereby acquires the same right to vote as if he had paid the tax in person.—*Humphrey v. Kingman*, 5 Met. 162.

A citizen of Massachusetts, who removes with his family to another state

and retaining no dwelling place here, although intending to retain his domicile and to return at some future indefinite time, has no domicile in this state.—*Holmes v. Greene*, 7 Gray, 299.

Female Voters.— Every female citizen having the qualifications of a male voter required by the preceding section may have her name entered upon the list of voters for school committee, and shall have the right to vote for members of the school committee upon complying with the requirements hereinafter set forth. *Ibid.*, S. 14.

Registration.— All persons desiring to exercise the right of suffrage are required to register. The rules for registration are given under the title "Registrars of Voters."

Voting-Machines.— Voting-machines for use at elections and primaries may be purchased by any town at a meeting held not less than ten days before the annual town meeting. No machine, however, can be purchased or used for such purposes except one approved by the board of examiners appointed by the governor. After the adoption of such machines, until the vote of adoption is rescinded, no other apparatus for voting and counting ballots can be used by the town adopting them.

The secretary of the commonwealth makes regulations for the use of the machines, ballot-boxes, and counting apparatus, and furnishes suitable instructions for the voters in towns in which they are used. Acts of 1903, C. 368; Acts of 1905, C. 313.

The requirement of the constitution that representatives "shall be chosen by written vote" may be complied with in voting by a machine which registers each vote cast without the use of separate ballots. The provisions for sorting and counting the votes for governor and for senators do not prevent the use of machines in voting and in counting the ballots cast.—*Opinion of Justices*, 178 Mass. 605.

Watch and Ward.— A town may establish and keep a watch and determine the number and qualifications of the watchmen. The selectmen shall appoint an officer to watch and direct the manner in which watchmen shall be equipped. The expense of the watch shall be defrayed like other town charges. C. 31, S. 1.

Note. The provisions of law under this title are for the most part obsolete, and are chiefly interesting as showing the needs and methods of an earlier day. For further details the reader is referred to the statutes. *Ibid.*, SS. 2, 19.

Water Commissioners.— A board of water commissioners may be created under a special act of the legislature when adopted by a town, whose duties, in general, are to have charge of the public water supply. These officers are chosen at the annual town meeting, and are sometimes associated as a joint board with sewer commissioners where a town has a public sewer system.

Power is conferred upon such commissioners by the general law to make contracts and to take water from any brook, stream, river, lake,

pond, or reservoir not already appropriated, for brief periods to relieve an emergency, when authorized by a vote of the town. C. 25, SS. 35-37.

Neither the water commissioners of a town, nor its agents, nor the town itself, by a vote can make a binding contract to take water from an unauthorized source.—*Smith v. Stoughton*, 185 Mass. 329.

It may be reasonable and lawful to charge the inhabitants of an outlying section of a city as much for the water they use in only part of the year, as the inhabitants of the heart of the city are charged for the whole year.—*Souther v. Gloucester*, 187 Mass. 552.

WAYS.

See "Selectmen."

MAINE

MAINE.

INTRODUCTORY.

Local government in Maine bears a close resemblance to that of Massachusetts. The causes are not far to seek. For nearly a century and a half, prior to 1820, when it became an independent state, Maine was under the domination, or formed a part of, Massachusetts.

Its town system is modelled on that of Massachusetts. The same town officers are chosen, with duties and powers substantially the same as those of the officers of towns in the older commonwealth.

Differences in conditions, however, have produced important modifications of the town system, especially as applied to the large, thinly-settled areas of the Pine-tree state. The territorial limits of Maine include almost as many square miles as are contained in all the other New England states, Aroostook county alone being about the size of the Bay State; but its population numbers only 24 persons to the square mile, while the other states taken together average 88, Massachusetts has 337 and Rhode Island 409 inhabitants to the square mile, according to the national census of 1900.

The unorganized places, which comprise a large proportion of the total area, including the islands along the sea-coast, are treated as wild lands for purposes of taxation. The inhabitants are assessed for state and county taxes by the assessors of the adjacent towns, and, upon furnishing to the assessors lists of their polls and estates, are allowed to vote for governor, senators, and representatives, and for county officers.

The simplest form of municipal government in Maine, established by law, appears in the plantations. They are created in one of two ways, either by special act of the legislature, or by organization under the general statutes. They must have not less than two hundred inhabitants, and their area cannot exceed a single township. Plantations might be denominated inchoate towns, performing as they do all the functions of towns, except those belonging to a body corporate and politic, which are gained only by legislative acts of incorporation.

Like towns, they choose annually a full quota of officers, excepting selectmen, whose duties devolve upon the assessors of taxes. The inhabitants are allowed to vote for state and county officers, repre-

sentatives to the state legislature and to Congress, and for electors of president and vice-president of the United States. They are liable for county taxes and for such state taxes as the legislature may impose.

"Village corporations" are another form of municipal government, inferior and usually subordinate to the towns in which they are situated. These corporations are created by special acts of the legislature, and in their purposes and powers greatly resemble the boroughs of Connecticut.

Their officers consist of a clerk, treasurer, three assessors, and such others as their by-laws provide for, with authority of like officers in towns. Vacancies *ad interim* are filled by the assessors, who also have the exclusive right to lay out and repair public ways. The right of suffrage is generally limited to persons liable to pay poll taxes, but, in some cases, to owners of real estate within the limits of the corporation, who are twenty-one years of age, are not aliens, and are qualified to vote for governor, senators, and representatives.

The corporation receives from the treasurer of the town in which it is situated that proportion of the money voted by the town for highways and bridges which the assessed valuation of the polls and estates of the corporation, as fixed by the town assessors, bears to that of the whole town, including the territory of the corporation.

Villages are generally authorized to raise taxes for the support of a fire department; to procure a water supply; to build and maintain roads, streets, sidewalks, sewers, and sanitary works; to sprinkle and light streets, and for schools and cemeteries. Their powers, however, vary, and are fixed in each case by the terms of their charters, which are subject to amendment and may be repealed by special act of the legislature; but acts of repeal would seem to be subject to acceptance by the voters of the town in which the corporation is situated.

An interesting example of the village corporation is furnished by Squirrel Island. The charter of this corporation provides that the officers shall consist of a clerk, who shall be a resident of the state, a treasurer, and five overseers, who shall be general municipal officers of the corporation and have general charge of its affairs and of the expenditure of all money therein. The officers of the town of Southport, in which Squirrel Island is situated, assess and collect the taxes, and pay over to the corporation sixty per cent. of the amount collected. The treasurer of the corporation receives all moneys and pays out the same on orders of the board of overseers.

Persons residing within the corporate limits who would be legal voters in Southport, and every person of lawful age who owns one or

more shares of stock in the Squirrel Island* Association, and is in possession of one or more lots of land, are voters, subject only to the action of the board of overseers, who determine who are legal voters, but have no power to disfranchise any one in possession of an aliquot part of a lot of land on which he has a dwelling-house, owned and occupied exclusively by himself.

In the pages that follow will be found, as full as is consistent with the scope and limits of the present work, the statutes now in force relating to the town officers and town government of Maine, together with citations from the more important decisions of the Supreme Judicial Court of the state, construing the same.

A word of explanation, however, seems necessary for the enlightenment of those who may approach the matter for the first time. By statutory definition, the term "Municipal officers" includes the mayor and aldermen of cities, the selectmen of towns and the assessors of plantations, and is used interchangeably with those designations in the public laws of the state. Inasmuch as this work is limited to the exposition of the law of towns, it has been deemed best to present the matter relating to the powers and duties of municipal officers under the title "Selectmen."

STATUTES.

[REFERENCES NOT OTHERWISE DESIGNATED ARE TO REVISED STATUTES OF MAINE, 1903, AS AMENDED.]

ASSESSORS OF TAXES.

Election.—Three or more assessors are elected annually by ballot, at the annual town meeting. C. 4, S. 12.

The law also provides that a town may vote to choose a board of three assessors, one for one year, one for two years and one for three years and thereafter renew such board by electing annually one member for the term of three years to fill the place of the retiring member. A town may also vote to choose a larger number of assessors and may determine how many shall be elected annually and the tenure of their office. P. L. 1905, C. 170.

Treasurers and collectors of taxes cannot be assessors until they have completed their duties as such, and have had final settlements with the town. A county commissioner is ineligible for assessor. C. 4, SS. 12, 14; C. 80, S. 8.

Penalties for Neglect to Choose Assessors.—Any town neglecting to choose selectmen or assessors, forfeits to the state not exceeding three hundred, nor less than one hundred dollars, as the supreme judicial court orders. C. 9, S. 90.

If the inhabitants of a town of which a state tax is required, neglect for five months, after having received the warrant of the treasurer of state for assessing it, to choose assessors to assess it, and cause the assessment thereof to be certified to such treasurer for the time being, he shall issue his warrant, under his hand, to the sheriff of the same county who shall proceed to levy such sums on the real and personal property of any inhabitants of such town, observing the regulations provided for satisfying warrants against deficient collectors as hereinafter prescribed. But if the assessors thereof, within sixty days from the receipt of a copy of such warrant from the officer, deliver to him a certificate, according to law, of the assessment of the taxes required by the warrant, and pay him his legal fees, he shall forthwith transmit the certificate to the treasurer of state, and return the warrant unsatisfied. *Ibid.*, S. 96.

Appointment by County Commissioners.—When a town fails to choose assessors or when the selectmen and assessors chosen do not accept the trust, the county commissioners may appoint three or more suitable persons in the county to be assessors of taxes, and such assessors,

being duly sworn, shall assess upon the polls and estates in the town their due proportion of state and county taxes, and the penalty imposed upon the town for neglect to choose such assessors, together with a sum not exceeding one dollar and fifty cents a day each, for their own reasonable charges for time and expense in said service; and shall issue a warrant under their hands for collecting the same, and transmit a certificate thereof to the treasurer of state, with the name of the person to whom it is committed.

The assessors chosen or appointed as above provided, shall observe all warrants received by them while in office from the treasurer of state, or the county commissioners of their county. *Ibid.*, SS. 91, 92.

Selectmen to be Assessors.—If any town does not choose assessors, or if so many of them refuse to accept that there are not such a number as the town voted to have, the selectmen shall be assessors, and each of them shall be sworn as an assessor. *Ibid.*, S. 89.

By law, the board of assessors cannot consist of less than three persons, who shall be qualified by taking the oath prescribed; and where it does not appear that more than two were thus qualified and acted, the tax assessed by them was illegal.—*Williamsburg v. Lord*, 51 Me. 600.

A town making no choice of assessors, voted that the selectmen act as assessors and the persons so chosen made oath "faithfully and impartially to discharge the duties of selectmen and assessors," held, to be a sufficient oath. An assessment made by such persons may be properly signed by them as assessors merely.—*Gould v. Munroe*, 61 Me. 546.

Selectmen must be sworn as assessors before they can legally assess a tax.—*Dresden v. Gould*, 75 Me. 298.

Assessors are expressly entitled to pay by the statute.—*Talbot v. East Machias*, 76 Me. 416; *White v. Levant*, 78 Me. 569.

The record of a town meeting that the town "voted and chose by ballot" three persons as selectmen, implies an election by major vote.—*Gerry v. Herrick*, 87 Me. 219.

Responsible Only for Faithfulness and Integrity.—Assessors of towns, plantations, school districts, parishes and religious societies, are not responsible for the assessment of any tax, which they are by law required to assess; but the liability shall rest solely with the corporation for whose benefit the tax was assessed, and the assessors shall be responsible only for their own personal faithfulness and integrity. *Ibid.*, S. 39.

The assessors are responsible only for their own personal faithfulness and integrity.—*Mosher v. Robie*, 11 Me. 137.

No action can be maintained against a town for the assessment and collection of an illegal school district tax.—*Trafton v. Alfred*, 15 Me. 262; *School District v. Bailey*, 12 Me. 259.

Where a tax has been assessed illegally upon members of a school district by authority of a town, any such person whose property is taken to pay such tax may recover it back from the town.—*Powers v. Sanford*, 39 Me. 183.

The law does not protect the assessors if they assess a poll tax upon a non-resident.—*Herriman v. Stowers*, 43 Me. 499.

Persons undertaking to act as assessors of a town without having been legally elected as such are personally liable for the acts of a collector to whom they have issued a warrant for the collection of taxes assessed by them.—*Allen v. Archer*, 49 Me. 346.

The assessors' authority to assess and commit to the collector the state tax does not depend upon the state treasurer's warrant.—*Rowe v. Friend*, 90 Me. 243.

Refusal to be Sworn, Penalty.—Any assessor, chosen and notified to take the oath of office, unreasonably refusing to be sworn, forfeits to the town fifteen dollars, to be recovered by their treasurer in an action of debt; and the selectmen shall forthwith call a town meeting to fill the vacancy. C. 9, S. 99.

Lists, Notice to Bring in.—Before making an assessment, the assessors shall give seasonable notice in writing to the inhabitants, by posting notifications in some public place in the town, or shall notify them, in such other way as the town at its annual meeting directs, to make and bring in to them true and perfect lists of their polls and all their estates real and personal, not by law exempt from taxation, of which they were possessed on the first day of April of the same year. *Ibid.*, S. 73.

If a taxpayer absents himself in order to avoid personal notice from the assessors to bring in a list of his taxable estate, where the known usage was to give notice in that way, he cannot afterward object to the tax on that account.—*Mussey v. White*, 3 Me. 300.

By virtue of the Public Laws 1865, ch. 319, assessors are not concluded by lists made and returned in conformity with R. S. 1857, ch. 6, § 53, amended by ch. 318, P. L. 1862.—*Gilpatrick v. Saco*, 57 Me. 277.

No person is entitled to apply to the county commissioners for an abatement of his tax unless after due notice he brought in to the assessors a true and perfect list of his taxable estate, or makes it appear to the commissioners that he was unable to do so.—*Boothby v. Woodman*, 66 Me. 387.

The requirement of assessors to give notice to taxpayers to bring in their lists of taxable property, is no longer a condition precedent to a valid assessment.—*Boothbay v. Race*, 68 Me. 352.

The true and perfect list of taxable estate which the statute requires the taxpayer to bring in need not contain any appraisal or estimate of the value of the property.—*Orland v. County Commissioners*, 76 Me. 461.

List Not Returned, No Abatement.—If any resident owner after such notice does not bring in such lists, the assessors shall ascertain otherwise, as nearly as may be, the nature, amount and value of the estate, real and personal, for which in their judgment he is liable to be taxed, and he is thereby barred of his right to apply to the assessors, or the county commissioners, for any abatement of his taxes, unless he offers such lists with his application and satisfies them that he was unable to offer it at the time appointed. *Ibid.*, S. 74.

Before any claim for redress will lie (to one aggrieved by assessment) the complainant must personally carry in the list required to the assessors, and be ready to make oath to its correctness if required; or make it appear to the commissioners that he was unable to offer such list at the time appointed.—*Winslow v. County Comrs.*, 37 Me. 561.

If a person who has presented to the assessors true and perfect lists of his polls and taxable estate refuses to answer all proper inquiries in relation to the nature and situation of his property, and, if required, to subscribe and make oath to the same, he is thereby barred from applying to the county commissioners for an abatement of his taxes.—*Lambard v. County Comrs.*, 53 Me. 507.

Assumpsit does not lie for an overvaluation by the assessors. The only remedy is an application for abatement.—*Gilpatrick v. Saco*, 57 Me. 280.

Certiorari will be issued to county commissioners, in the discretion of the court, in a case where the jurisdictional facts do not appear in the record.—*Fairfield v. County Comrs.*, 66 Me. 387.

Where a party refused to make oath to his statement of taxable property when requested by the assessors, it was held that such refusal debarred him from his right to have an adjudication by the commissioners.—*Freedom v. County Comrs.*, 66 Me. 173.

It is the duty of the assessors to give the notice. If they fail to do so persons who fail to bring in their list would still have a right to appeal to the county commissioners. Whereas, if the assessors gave the notice, the person who did not bring in his list would have no right of appeal to the commissioners unless he could show that he was unable to bring in the list.—*Booth-boy v. Race*, 68 Me. 353.

The "true and perfect list," required comprises a true enumeration, description and specification only of property not exempt from taxation.—*Orland v. County Comrs.*, 76 Me. 461.

Where one of the tenants in common of real estate taxed in one sum pays the tax, equity will not thereby establish a lien for reimbursement by the other co-tenant.—*Preston v. Wright*, 81 Me. 310.

Lists Returned; Oath Required.—The assessors or either of them may require the person presenting such list to make oath to its truth, which oath either of them may administer, and either of them may require him to answer all proper inquiries in writing as to the nature, situation and value of his property liable to be taxed in the state, and a refusal or neglect to answer such inquiries and subscribe the same, bars an appeal to the county commissioners, but such list and answers shall not be conclusive upon the assessors. *Ibid.*, S. 75.

A person who has made a return to the assessors under oath yet refuses to answer all proper inquiries in relation to the nature and situation of his property is barred from applying to the county commissioners for any abatement of his taxes.—*Lambard v. County Comrs.*, 53 Me. 507; *Freedom v. County Comrs.*, 66 Me. 176.

When a citizen of a town has been overrated by the assessors, either on an overvaluation, or on property not owned by him, his only remedy is by an application for abatement.—*Gilpatrick v. Saco*, 57 Me. 277; *Hemingway v. Machias*, 33 Me. 445.

The board of commissioners hearing applications in abatement is a quasi court, and applications to this board making a part of its record must necessarily be in writing.—*Levant v. County Comrs.*, 67 Me. 435.

The jurisdictional facts should be set forth in the application, but the commissioners may entertain it on proof of them without objection.—*Orland v. County Comrs.*, 76 Me. 467.

Manufacturing, Mining, etc., Corporations, Buildings.—The buildings, lands, and other property of manufacturing, mining and smelting corporations, made personal by their charters, and not exempt from taxation, and all stock used in factories, shall be taxed to the corporation, or to the persons having possession of their property or stock, in the town or place where the corporations are established, or the stock is manufactured; and there shall be a lien for one year on such property and stock for payment of such tax, and it may be sold for payment

thereof, as in other cases; and shares of the capital stock of such corporations shall not be taxed to their owners. *Ibid.*, S. 25.

Wide Wheels and Watering Troughs.—A town at its annual meeting may authorize its assessors to abate not exceeding three dollars of the tax of any person, upon proof that he has owned and used on the ways during that year cart wheels having fellos not less than six inches wide. And they shall abate three dollars from the tax of any inhabitant, who shall construct, and during the year keep in repair a watering trough beside the highway, well supplied with water. C. 23, S. 74.

A town is not liable for injuries suffered by a traveler who departed from a well-wrought traveled path on a highway to reach a watering-trough within the limits of the highway erected without the authority of the town.—*Hall v. Unity*, 57 Me. 529.

Under an act of the legislature authorizing an exemption from taxation for six years, a vote of the city council to exempt for five years is valid.—*Portland v. Portland Water Co.*, 67 Me. 138.

Supplementary Assessments.—When any assessors, after completing the assessment of a tax, discover that they have by mistake omitted any polls or estate liable to be assessed, they may, during their term of office, by a supplement to the invoice and valuation, and the list of assessment, assess such polls and estate their proportion of such tax according to the principles on which the assessment was made, certifying that they were omitted by mistake. Such assessments shall be committed to the collector with a certificate stating that they were omitted by mistake, and that the powers in their previous warrant, naming the date of it, are extended thereto. *Ibid.*, S. 35.

Statute upheld.—*Gould v. Monroe*, 61 Me. 547.

A misnomer in the warrant should be corrected before a distraint under it.—*Farnsworth Company v. Rand*, 65 Me. 25.

A taxpayer cannot complain if the supplementary assessment does not increase the valuation or the tax.—*Rockland v. Ulmer*, 87 Me. 359.

An increase of the valuation of personal property in a supplementary assessment is unauthorized and illegal.—*Dresden v. Bridge*, 90 Me. 491.

Before supplementary assessments are committed to the collector, the supplement to the invoice and valuation and list of assessments must be accompanied by a certificate under the hands of the assessors that they were omitted by mistake.—*Topsham v. Purinton*, 94 Me. 354.

Absconding Taxpayer Imprisoned.—If the assessors think that there are just grounds to fear that any person so assessed may abscond before the end of said twelve days, the constable or collector may demand immediate payment, and on refusal, he may commit him as aforesaid. C. 10, S. 21.

Assessments, How Made.—The assessors shall assess upon the polls and estates in their town all town taxes and their due proportion of any state or county tax, according to the rules in the latest act for raising a state tax, and in this chapter; make perfect lists thereof under their

hands; and commit the same to the constable or collector of their town, if any, otherwise to the sheriff of the county or his deputy, with a warrant under their hands, in the form prescribed. C. 9, S. 84.

The lists of assessment of taxes must be signed by the assessors. The signing of the warrant, usually inserted at the end of the tax-bill, is not a sufficient compliance with the statute.—*Fowcroft v. Nevens*, 4 Me. 72.

The board of assessors cannot consist of less than three who shall qualify by taking the oath prescribed. A less number cannot make a valid assessment.—*Williamsburg v. Lord*, 51 Me. 599.

A commitment prefixed to, and specifically referring to, the lists of assessments and signed by a majority of the assessors, is a sufficient authentication, and compliance with the statute.—*Lowe v. Weld*, 52 Me. 588.

In the assessment which establishes a lien and which is the foundation on which rest all the subsequent proceedings, the lots taxed must be definitely and distinctly described.—*Greene v. Lunt*, 58 Me. 72.

To give the collector his required authority, he must have a legal warrant and a "perfect list" of the taxes under the hands of the assessors.—*Pearson v. Canney*, 64 Me. 190.

The assessors may combine the state, county or town taxes in one warrant, and their certificates accordingly.—*Norridgewock v. Walker*, 71 Me. 183.

Where forfeitures are claimed for nonpayment of taxes, the most exact compliance with the law must be observed; but when taxes are sued for and the defendant is only asked to share his just proportion of the public burdens, the most liberal construction and consideration should be given to procedure in the assessment of taxes.—*Rockland v. Rockland Water Co.*, 82 Me. 194, citing *Cressey v. Parks*, 76 Me. 532, 534.

The list of taxes committed to the collector by the assessors under their hands with their warrant is an original paper, and is admissible in evidence to prove the assessment.—*Howe v. Moulton*, 87 Me. 120.

Before supplemental assessments are committed to the collector, they must be accompanied with a certificate under the hands of the assessors stating that they were omitted by mistake.—*Topsham v. Purinton*, 94 Me. 356.

The taxes assessed to a person after her death held to be utterly void.—*Morrill v. Lovett*, 95 Me. 166.

Assessments Continued.—When assessors continue to assess real estate to the person to whom it was last assessed, such assessment is valid, although the ownership or occupancy has changed, unless previous notice is given of such change, and of the name of the person to whom it has been transferred or surrendered; and a tenant in common, or joint tenant, may be considered sole owner for the purpose of taxation, unless he notifies the assessors what his interest is. *Ibid.*, S. 24.

State and County Taxes Added.—They may add their proportion of the state and county tax to any of their other taxes, and make one warrant and their certificates accordingly. *Ibid.*, S. 85.

The assessors may combine the state, county and town taxes in one warrant.—*Norridgewock v. Walker*, 71 Me. 183.

Assessors of taxes are not agents of the town but public officers. Their acts in omitting to assess a tax against an individual do not conclude the town as to the fact of his residence, and are not evidence on that question.—*Rockland v. Farnsworth*, 93 Me. 178.

Stock Owned Out of State.—Stock of any bank or other corporation, except a manufacturing corporation, or corporation mentioned in section

twenty-six, held by persons out of the state, or unknown, which has not been certified according to section twenty-four of chapter forty-seven, in any town in the state, and is not there assessed; and the stock of any bank or such other corporation appearing by the books thereof to be held by persons residing out of the state, or whose residence is unknown to the assessors, shall, unless exempt, be assessed in the town where such bank or other corporation is located, or transacts its ordinary business; and such town has a lien on such stock and all dividends thereon from the date of such assessment until such tax and all costs and expenses of the collection thereof are paid. C. 9, S. 30.

Bank, Shares Where Taxed.—When returns of stock in banks and national banking associations and other corporations are made according to the preceding section, or section twenty-four of chapter forty-seven, if it is found by the assessors of any town receiving such returns that the holders of such stock do not reside in such town, they shall within fifteen days return the names of such stockholders, with the amount of stock held by them to the assessors of the town where such stockholders reside, if their residence is known, and within the state; and if not, such return shall be made to the assessors of the town where the bank is located, and shall be subject to section thirty of this chapter. *Ibid.*, S. 32.

Toll-Bridges, Stock of.—The stock of toll-bridges shall be taxed as personal property, to the owners thereof, in the towns where they reside, except stock owned by persons residing out of the state, which shall be taxed in the town where the bridge is located, and where such bridge is in two towns one-half of such stock so owned by persons residing out of the state shall be assessed and taxed in each town. *Ibid.*, S. 14.

Abatement.—The assessors for the time being, on written application, stating the grounds therefor, within two years from the assessment, may make such reasonable abatement as they think proper. If after two years from the date of assessment, a collector is satisfied that a poll tax, or tax upon personal property, or any portion of said tax, committed to him, or to any of his predecessors in office for collection, cannot be collected by reason of inability of the person assessed to pay, he shall notify the assessors thereof in writing, under oath, stating the reason why such tax cannot be collected. The assessors, after due inquiry, may abate such tax or any part thereof, and shall certify such abatement in writing to the collector; and said certificate shall discharge the collector from further obligation to collect the tax so abated.

They shall keep in suitable book form a record of such abatements, with the reasons for each, and report the same to the town at its annual meeting by the first Monday in each March. *Ibid.*, S. 76.

They shall give to any person applying to them for an abatement of taxes, notice in writing of their decision upon such application within ten days after they take final action thereon.

If they refuse to make the abatement asked for, the applicant may apply to the county commissioners at their next meeting, and if they think that he is overrated, he shall be relieved by them, and be reimbursed out of the town treasury the amount of their abatement, with incidental charges. The commissioners may require the assessors or town clerk to produce the valuation, by which the assessment was made, or a copy of it. If the applicant fails, the commissioners shall allow the costs to the town, taxed as in a suit in the supreme judicial court, and issue their warrant of distress for collection thereof against him. *Ibid.*, SS. 77, 78.

An order by the selectmen in favor of a collector for an abatement of certain taxes did not operate to release the persons named, but merely to release the collector from accounting for the sums specified in the order.—*Hoxie v. Weston*, 19 Me. 330.

A person aggrieved by an overvaluation has only one remedy on a refusal of the assessors to make the proper abatement, viz., by application to the county commissioners.—*Hemingway v. Machias*, 33 Me. 446; *Gilpatrick v. Saco*, 57 Me. 280.

The application to the assessors for abatement need not be in writing unless they require it.—*Levant v. County Comr's.*, 67 Me. 430.

If one who is properly assessed for certain personal property in a town is also assessed therein for other personal property which is taxable in an adjoining town, and pays the tax upon the latter property under protest, an action does not lie against the town therefor. His proper remedy is by application for abatement. The same rule applies to real estate.—*Waite v. Princeton*, 66 Me. 225.

The application for abatement should set forth specifically on what property abatement is desired.—*Orland v. County Comr's.*, 76 Me. 467.

Religious Institutions.—All taxes heretofore assessed or to be assessed hereafter upon legacies or bequests to religious institutions are abated. P. L. 1903, C. 156.

Births, Returns.—The assessors shall, when taking the annual inventory, collect and return to the town clerk before the first day of June, the births which have occurred within their respective jurisdictions during the year ending December thirty-first next preceding, together with the names of such children. C. 61, S. 31.

Blood Animals.—Blood animals, brought into the state and kept for improvement of the breed, shall not be taxed at a higher rate than stock of the same quality and kind bred in the state. C. 9, S. 17.

Blooded Cattle, Record.—The assessors are required to keep a record of all pure blooded cattle kept for breeding purposes, and to report to the secretary of the cattle commissioners, on or before the first day of July in each year, the name of the owner, number of each herd, age and sex, such reports to be made upon blanks furnished by the cattle commissioners. P. L., 1905, C. 83.

Bond of Constable or Collector.—The assessors shall require the constable, or collector to give bond for the faithful discharge of his duty,

to the inhabitants of the town, in such sum, and with such sureties, as the municipal officers approve. C. 10, S. 14.

County Tax, Penalty for Neglect to Assess.—If the assessors of a town neglect to assess the county tax required in the warrant of the county commissioners to be assessed by them, they forfeit that sum to the county; and it shall be levied by sale of their real and personal estate, by virtue of a warrant issued by the county treasurer to the sheriff of the county for that purpose. C. 9, S. 94.

If the sheriff cannot find property of said assessors to satisfy the sum due on either of said warrants, he may arrest and imprison them, until they pay the same; and the county commissioners shall forthwith appoint other proper persons to be assessors of such state and county taxes, who shall be sworn, and perform the same duties, and be liable to the same penalties, as the former assessors. *Ibid.*, S. 95.

If the inhabitants of a town of which a county tax is required neglect to choose and keep in office assessors to assess it, as the law requires, the county treasurer, for the time being, after five months from the time when they received the county commissioners' warrant for assessing it, shall issue his warrant to the sheriff requiring him to levy and collect the sum mentioned therein; and he shall execute it, observing the regulations and subject to the conditions provided in section ninety-six. *Ibid.*, S. 97.

County or Town Taxes; Warrant.—The warrant for collection of county or town taxes shall be made by the assessors in the same tenor as that for state taxes, with proper changes. C. 10, S. 9.

The law permits the assessors to combine the state, county and town taxes in one warrant.—*Norridgewock v. Walker*, 71 Me. 183; *Wellington v. Lawrence*, 73 Me. 126.

A certificate to a town treasurer, by the assessors that they have put into the hands of a collector a list of assessments for a school district "with a warrant in due form of law," justifies the treasurer in issuing a warrant of distress against the collector for failure to collect such assessments and pay them into the treasury, whether the warrant to the collector was in fact good or not.—*Snow v. Winchell*, 74 Me. 410.

County Treasurer; Certificate.—When they have assessed any county tax and committed it to the officer for collection, they shall return to the county treasurer a certificate thereof with the name of such officer. When they have so assessed and committed a state tax, they shall return a like certificate to the treasurer of state; and if this is not done, and any part of such tax remains unpaid for sixty days after the time fixed for its payment, the treasurer of state shall issue his warrant to the sheriff or his deputy to collect the sum unpaid of the inhabitants of the town or place. C. 9, S. 88.

Deceased, Real Estate.—The undivided real estate of a deceased person may be assessed to his heirs or devisees without designating any of them by name, until they give notice to the assessors of the division of

the estate, and the names of the several heirs or devisees; and until such notice is given, each heir or devisee shall be liable for the whole of such tax, and may recover of the other heirs or devisees their portions thereof when paid by him. Or such real estate may be assessed to the executor or administrator of the deceased, and such assessment shall be collected of him the same as taxes assessed against him in his private capacity, and it shall be a charge against the estate and shall be allowed by the judge of probate; but when such executor or administrator notifies the assessors that he has no funds of the estate to pay such taxes, and gives them the names of the heirs, and the proportions of their interests in the estate to the best of his knowledge, the estate shall no longer be assessed to him. *Ibid.*, S. 21.

Undivided real estate may be taxed to the heirs without naming them only when it descends to them by operation of law; and it may be taxed to devisees without naming them only when it comes to them by will.—*Elliot v. Spinney*, 69 Me. 31.

A tax assessed to the "estate of" a deceased person is void. It may be assessed against his heirs, or devisees, or to the executor or administrator, in which latter case it is a charge against the estate.—*Fairfield v. Woodman*, 76 Me. 551.

In a given case the assessment to "James Ulmer Heirs," held to be valid against the heirs and devisees of James Ulmer, no notice having been given to the assessors of any will or division of the estate.—*Rockland v. Ulmer*, 87 Me. 359.

A tax to H. J. M. after death held utterly void, and the purchaser at a sale for nonpayment of the tax took nothing, and could not maintain a claim for reimbursement.—*Morrill v. Lovett*, 95 Me. 168.

Dogs, Lists.—Assessors of taxes shall include in their inventories, lists of all dogs owned by or in possession of any inhabitant on the first day of April, and make a return to the treasurer of state of said lists and also of the number of dogs killed as required by section fifty of this chapter on or before the fifteenth day of July following. C. 4, S. 44.

Electors on Islands.—Electors living on islands adjacent to the mainland along the coast of the state and within the jurisdiction thereof, but not incorporated with any town, and all such electors living in other unorganized places may furnish lists of their polls and estates to the assessors of any adjacent town on or before the first day of each April, and said assessors shall assess state and county taxes upon all such persons. C. 6, S. 75.

Electors living in unincorporated places may furnish lists of their polls and estates to the assessors of any adjacent town on or before the first day of April. Such elector is not liable to be assessed for a town tax.—*Sargent v. Milo*, 90 Me. 375.

Error Does not Avoid Assessment.—If money not raised for a legal object is assessed with other moneys legally raised, the assessment is not void. C. 10, S. 31.

A town when it formed but one parish erected a meeting-house and after several years, divers citizens having in the meantime become members of

other parishes, the town in its municipal capacity raised money to repair the house and assessed all the inhabitants, generally. *Held* that this was illegal so far as those citizens were concerned.—*Paine v. Ross*, 5 Me. 400.

No action can be maintained against a town for the assessment and collection of an illegal school district tax.—*Trafton v. Alford*, 15 Me. 258.

In order to recover back a tax on the ground that it was illegally assessed, the payer must show that he paid it under duress of his person or seizure of his property, or that part was paid under protest, to avoid such arrest or seizure. He must also show that he paid the tax to the treasurer or some other legal officer or agent of the town, authorized to receive the money.—*Smith v. Readfield*, 27 Me. 145.

The right of action against a town, for recovery of damages occasioned by mistake, error, or omission of the assessors, does not extend to errors in judgment, made by them respecting the value of personal property, liable to be assessed.—*Stickney v. Bangor*, 30 Me. 404.

Where a person was taxed for personal estate by the assessors of a town of which he was not an inhabitant and was compelled to pay the tax, which he paid under protest, or where it was paid by seizure and sale of his property and the money paid into the town treasury, he may recover the same in a suit against the town for money had and received without proof that the acting town officers were legally elected and qualified.—*Hathaway v. Addison*, 48 Me. 440.

If one under duress pays a tax wrongfully assessed to him and the money goes into the town treasury, he may recover the amount in an action against the town without first making a demand for the same.—*Look v. Industry*, 51 Me. 375.

In an action for possession of certain parcels of land claimed under a sale for non-payment of taxes, a recovery was had for the parcels sufficiently described.—*Greene v. Lunt*, 58 Me. 518.

Sums paid for extra interest as well as those paid for a prosecuting committee, but not raised by a vote of the town, cannot be deemed as included in a tax and be recovered back as being "raised for an illegal purpose."—*Gilman v. Waterville*, 59 Me. 491.

Misnomer of a corporation will not necessarily defeat a tax against it.—*Farnsworth Company v. Rand*, 65 Me. 19.

No error, mistake, or omission by the assessors renders the assessment void, if any part of the money is legally raised.—*Boothbay v. Race*, 68 Me. 357.

The errors or omissions do not affect the tax, but having paid that the taxpayer is entitled to an action not to recover his money back, but for his damages by reason of such errors and omissions.—*Hayford v. Belfast*, 69 Me. 65.

A tax assessed to "heirs" without naming them is valid only when the estate descends to them, and not when it passes by will to "devisees."—*Elliot v. Spinney*, 69 Me. 31.

Failure on the part of the assessors to attach certificates of their assessments upon the lists and to make a record of their assessments and to lodge the same or a copy in the assessors' office, if any, in the town, and otherwise with the town clerk, before they issue a warrant of commitment, will not invalidate the assessment, if the town is able to prove an assessment regularly made by other legal evidence.—*Norridgewock v. Walker*, 71 Me. 181.

The legislature cannot authorize the assessment upon the polls and estates of a school district of an excess of money expended by the municipal officers above the sum voted by the district for the erection of a schoolhouse in the absence of a vote of the district to raise such excess.—*Carlton v. Newman*, 77 Me. 408.

A tax against the administrators of an estate, when the representative parties were executors, *held* not a fatal mistake, and that parol evidence was admissible to show that the latter were the individuals to be taxed.—*Bath v. Reed*, 78 Me. 276.

A tax against the defendant and "wife" may be recovered in an action of debt against the defendant alone, if the non-joinder of the wife be not pleaded in abatement.—*Topsham v. Blondell*, 82 Me. 152.

A clerical error as to the amount of a tax does not make the assessment void or render the assessors liable for plaintiff's arrest by the collector.—*Rowe v. Friend*, 90 Me. 242.

A tax is not valid against an executor which is assessed against the estate.—*Dresden v. Bridge*, 90 Me. 494.

The term "omission" was meant to signify an absence of the requisite formalities in assessments and commitments, and a failure to observe the regulations of the statute intended to promote system and uniformity in the mode of proceeding, and not a failure to include in the assessment all the property that ought to be taxed.—*Emery v. Sanford*, 92 Me. 525.

A failure to prove the existence of supplementary lists of taxes signed by the assessors is fatal to the recovery of the supplemental tax based upon them.—*Topsham v. Purinton*, 94 Me. 358.

A tax cannot be recovered back if it had been lawfully assessed, even if paid under duress.—*Foss v. Whitehouse*, 94 Me. 495.

Exemptions.—The following property and polls are exempt from taxation:

I. The property of the United States and of this state and the property of any public municipal corporation of this state appropriated to public uses.

II. All property which by the articles of separation is exempt from taxation; the personal property of all literary and scientific institutions; the real and personal property of all benevolent and charitable institutions incorporated by the state; the real estate of all literary and scientific institutions occupied by them for their own purposes or by any officer thereof as a residence. Corporations whose property or funds in excess of their ordinary expenses are held for the relief of the sick, the poor, or the distressed, or of widows and orphans, or to bury the dead, are benevolent and charitable corporations within the meaning of this specification, without regard to the sources from which such funds are derived, or to limitations in the classes of persons for whose benefit they are applied; but so much of the real estate of such corporation as is not occupied by them for their own purposes, shall be taxed in the municipality in which it is situated. And any college in this state authorized under its charter to confer the degree of Bachelor of Arts or of Bachelor of Science, and having real estate liable to taxation, shall, on the payment of such tax and proof of the same to the satisfaction of the governor and council be reimbursed from the state treasury to the amount of the tax so paid; *provided, however*, the aggregate amount so reimbursed to any college in any one year shall not exceed fifteen hundred dollars; and *provided, further*, that this claim for such reimbursement shall not apply to real estate bought by any such college after April twelve, eighteen hundred and eighty-nine.

III. The household furniture of each person, not exceeding two hundred dollars to any one family, his wearing apparel, farming utensils, mechanics' tools necessary for his business, and musical instruments not exceeding in value fifty dollars to one family.

IV. Houses of religious worship, including vestries, and the pews and furniture within the same, except for parochial purposes; tombs and rights of burial; and property held by a religious society as a parsonage, not exceeding six thousand dollars in value, and from which no rent is received, and personal property not exceeding six thousand dollars in value. But all other property of any religious society, both real and personal, is liable to taxation the same as other property.

V. All mules, horses, neat cattle, swine and sheep, less than six months old.

VI. Hay, grain and potatoes, orchard products and wool, owned by and in possession of the producer.

VII. The polls and estates of Indians; and the polls of persons under guardianship.

VIII. The polls and estates of persons who by reason of age, infirmity and poverty, are in the judgment of the assessors unable to contribute toward the public charges; and the polls of all soldiers and sailors who receive state pension.

X. The aqueducts, pipes and conduits of any corporation, supplying a town with water, are exempt from taxation, when such town takes water therefrom for the extinguishment of fires without charge. But this exemption does not include therein, the capital stock of such corporation, any reservoir or grounds occupied for the same, or any property, real or personal, owned by such company or corporation, other than as hereinabove enumerated.

XI. Whenever a landholder, having, prior to March thirty, eighteen hundred and eighty-two, planted or set apart for the growth and production of forest trees any cleared land or lands from which the primitive forest had been removed, successfully cultivates the same for three years, the trees being not less in numbers than two thousand on each acre and well distributed over the same, then, on application of the owner or occupant thereof to the assessors of the town in which such land is situated, the same shall be exempt from taxation for twenty years after said application, *provided*, that said applicant at the same time files with said assessors a correct plan of such land with a description of its location, and a statement of all the facts in relation to the growth and cultivation of said incipient forest; *provided further*, that such grove or plantation of trees is during that period kept alive and in a thriving condition.

XII. Mines of gold, silver or the baser metals, when opened and in process of development, are exempt from taxation for ten years from the time of such opening. But this exemption does not affect the taxation of the lands or the surface improvements of the same, at the same rate of valuation as similar lands and buildings in the vicinity. C. 9, S. 6.

R. S., c. 6, sec. 5, authorizing taxes to be assessed on "all shares in moneyed corporations," includes shares in national banks.—*Stetson v. Bangor*, 56 Me. 274.

Members of a voluntary association not incorporated cannot claim the exemption granted to certain corporations.—*Marsh River Lodge v. Brooks*, 61 Me. 585.

Prior to St. 1874, c. 178, hay was not exempt from taxation in the hands of the producer. Hay, grain and potatoes, orchard products and wool, owned by and in the possession of the producer are now exempt from taxation.—*Donnell v. Webster*, 63 Me. 16.

A corporation formed for certain purposes defined as falling within the class of "charitable institutions."—*Convention v. Portland*, 65 Me. 92.

Public charity defined as having funds derived from gifts and devises not from fees, dues and assessments, and is not confined to certain privileged individuals, but is open to the general public. A masonic lodge is not a charitable or benevolent institution.—*Bangor v. Masonic Lodge*, 73 Me. 428.

A tax was rightfully assessed to a tenant in possession of land held under a parol lease *in perpetuum*.—*Foxcroft v. Straw*, 86 Me. 77.

Real estate is rightfully taxed to a religious association when rented for the sake of obtaining revenue therefrom.—*Auburn v. Y. M. C. Association*, 86 Me. 246.

The aqueducts, pipes and conduits of water companies are subject to municipal taxation, unless the town takes water therefrom for the extinguishment of fires without charge.—*Dover v. Water Co.*, 90 Me. 180.

Stock of Companies Invested in the State.—When an insurance or other incorporated company is required by law to invest its capital stock or any part thereof in the stock of a bank, or other corporation in the state, for the security of the public, such investments shall not be liable to taxation except to the stockholders of the company so investing as making a part of the value of their shares in the capital stock of the company. *Ibid.*, S. 18.

Insurance Companies, Stock.—When the capital stock of any insurance company incorporated in the state, is taxed at its full value, the securities and pledges held by said company to the amount of said stock, are exempt from taxation; but if the pledge or security consists of real estate in a town other than that where the stockholder resides, it shall be taxed where it lies, and the stock shall be exempt to the amount for which it is assessed. *Ibid.*, S. 19.

Fines Certified to Assessors.—When a fine is imposed on a town, the clerk of the court shall certify it forthwith to the assessors; who shall assess the amount thereof, as other town taxes, certify the same to said clerk, and cause the amount to be collected by their collector, who shall pay the same to such agent at such time as the court orders. C. 23, S. 85.

Failure to state in the notice the term at which the fine was imposed, is not an omission; and the requirement that the notice shall be given forthwith is merely directory to the clerk, and noncompliance therewith is not fatal to all prior proceedings.—*State v. Oxford*, 65 Me. 211.

High School Taxes; Overlay.—When a free high school precinct votes to raise money for establishing and maintaining a free high school, its clerk shall forthwith, or within the time prescribed by the precinct, certify the amount thereof to the assessors of the town, and the time when it must be raised; and within sixty days after receiving such certificate they shall assess it as they do town taxes, on the polls and estates of the

residents and owners in the precinct at the time of raising said money, whether wholly in their town or not, and on the non-resident real estate in the precinct. They shall then make their warrant in due form of law, directed to any collector of their town if any, if not to a constable, requiring him to levy and collect such tax and pay it to the town treasurer within the time limited in the warrant; and they shall give a certificate of the assessment to such treasurer, and may abate such taxes as in the case of town taxes.

The assessors may include in their assessment such sum over and above the sum committed to them to assess, not exceeding five per cent thereof, as a fractional division renders necessary, and certify that fact to the town treasurer. C. 15, SS. 66, 67.

A school district has power to raise money to build a school-house.—*School District v. Bailey*, 12 Me. 258.

No action can be maintained against a town for the assessment and collection of an illegal school district tax.—*Traftors v. Alfred*, 15 Me. 258; *Trim v. Charleston*, 41 Me. 505.

If a vote passed by a school district, though informal, clearly shows the intention of the voters to raise money to build a school-house, it is sufficient to authorize the assessment and collection of the amount.—*Soper v. Livermore*, 28 Me. 203.

If a school district has legally voted to raise money for the purposes within its authority and the assessors ascertain the fact and assess the same, such assessment is not rendered inoperative by the omission of the district clerk to certify to the assessors the vote of the district.—*Smyth v. Titcomb*, 31 Me. 285.

A school district, not formed by the town, in pursuance of statutory provisions has no corporate powers, and an assessment of taxes by the assessors of the town pursuant to the vote of such a district, raising money for the erection of a school-house is illegal.—*Tucker v. Wentworth*, 35 Me. 397.

A town cannot raise money for a school district by a tax assessed upon its polls and estates without a vote of the district, where no disagreement of the voters in the district appears.—*Powers v. Sanford*, 39 Me. 187.

An action lies against a school district for money collected for a tax illegally assessed and paid under duress, where the collector has deposited it with the town treasurer.—*Starbird v. School District*, 51 Me. 102.

When a school district votes to raise money for any legal purpose, not only residents are to be assessed as heretofore, but also persons who at the time of raising the money own therein the class of property subject to taxation in towns.—*Hartshorn v. Assessors of Ellsworth*, 60 Me. 280.

A certificate to a town treasurer by the assessors that they have put into the hands of the collector a list of the assessments of a school district tax with a warrant in due form of law, justifies the treasurer in issuing a warrant of distress against the collector for failure to collect such assessments and pay them to the treasurer as required by law.—*Snow v. Winchell*, 74 Me. 411.

Land Owners or Tenants.—All real estate, and such as is usually called real, but is made personal by statute, may be taxed to the tenant in possession, or to the owner, whether living in the state or not, in the town where it is; and when a state, county or town tax is assessed on lands owned or claimed to be owned, in common, or in severalty, any person may furnish the collector, or treasurer, to whom the tax is to be paid, an accurate description of his part of the land, in severalty, or

his interest, in common, and pay his proportion of such tax; and thereupon his land or interest shall be free of all lien created by such tax. C. 9, S. 23.

Non-resident improved lands taxed to persons within the state may be sold for nonpayment of taxes thereon.—*Wescott v. McDonald*, 22 Me. 405.

The sale by a collector of improved land taxed to owners unknown, without notice to the owners, is unauthorized and void.—*Brown v. Veazie*, 25 Me. 366.

Sales of lands of resident owners for nonpayment of the taxes are invalid unless it appears from the advertisements of the sale that nine months from the date of the assessment have elapsed.—*Hobbs v. Clements*, 32 Me. 67.

A town or city tax cannot be lawfully assessed to the mortgagee of land who is not in possession, and has never entered to foreclose.—*Coombs v. Warren*, 34 Me. 90.

While the mortgagor is in possession of the land, it is his duty to pay the taxes upon it.—*Williams v. Hiltor*, 35 Me. 547.

Real estate of a railroad corporation held to be subject to taxation.—*Cumberland Marine Railway v. Portland*, 37 Me. 444.

Improved real estate and personal property may be assessed to non-residents, and upon neglect to pay within the time limited, the collection may be enforced by arrest and imprisonment in the county in which they may be found.—*Hartland v. Church*, 47 Me. 172.

Persons residing in part of a town set off from the rest are for purposes of assessment of taxes, to be treated, under the act setting them off, as still inhabitants of the original town.—*Winslow v. Morrill*, 47 Me. 415.

Unimproved land may be taxed to an owner residing in another town in the state.—*Oldtown v. Blake*, 74 Me. 280.

Legal Assessments, What.—No assessment of a tax by a town or parish is legal, unless the sum assessed is raised by vote of the voters, at a meeting legally called and notified. *Ibid.*, S. 72.

A city tax is invalid when the resolve raising it passed by the city council has not been approved by the mayor as required by the city charter.—*Rockland v. Farnsworth*, 86 Me. 533.

Mortgaged Personal Property.—When personal property is mortgaged or pledged, it shall, for purposes of taxation, be deemed the property of the party who has it in possession, and it may be distrained for the tax thereon. Money or personal property, loaned or passed into the hands or possession of another, by any person residing in the state, secured by an absolute deed of real estate, shall be taxed to the grantee, as in case of a mortgage, although the land is taxed to the grantor or other person in possession. *Ibid.*, S. 20.

H. held a mortgage on a stock of goods and took from the mortgagor a bill of sale and on the following day took possession and delivered the same to B., to whom he had bargained it, and three days thereafter paid to a collector of taxes a sum of money claimed as taxes due from the mortgagor, to prevent the distress of the goods. Held, that H. had the interests and rights of an owner.—*Howard v. Augusta*, 74 Me. 79.

New Assessment.—The assessors having written notice from the treasurer of the failure of their constable or collector, shall forthwith, without any further warrant, assess the sum so due upon the inhabitants of their town as the sum so committed was assessed, and commit it to

another constable or collector for collection; and if they neglect, the treasurer of state shall issue his warrant against them for the whole sum due from such constable or collector, which shall be executed by the sheriff or his deputy, as other warrants issued by such treasurer. If after such second assessment the tax is not paid to the treasurer within three months from the date of its commitment, the treasurer may issue his warrant to the sheriff of the county requiring him to levy it on real and personal property of any inhabitants of the town, as herein before provided. C. 10, S. 45.

Overlay.— They may assess on the polls and estates such sum above the sum committed to them to assess, not exceeding five per cent thereof, as a fractional division renders convenient, and certify that fact to their town treasurer. C. 9, S. 86.

An overlay not exceeding five per cent. does not render the assessment of a village corporation tax illegal or void, where by the terms of its charter such assessments are to be made like county assessments.—*Lord v. Parker*, 83 Me. 533.

Assessors of taxes are not agents of the town, but public officers. Their acts in omitting to assess a tax against an individual are but expressions of their opinion, and not only do not conclude the town as to the fact of residence, but are not entitled to be considered as evidence on that question.—*Rockland v. Farnsworth*, 93 Me. 178.

Partners; Personal Estate.— Partners in business whether residing in the same or different towns may be jointly attached, under their partnership name, in the town where their business is carried on, for all personal property enumerated in paragraph one of section thirteen, employed in such business; and if they have places of business in two or more towns, they shall be taxed in each town for the portion of property employed therein; except that if any portion of such property is situated in a town other than where their place of business is, under the circumstances specified in said paragraph, they shall be taxed therefor in such other towns; and in such cases they shall be jointly and severally liable for such tax. *Ibid.*, S. 22.

For the purpose of taxation, the firm and not an individual member of it is the owner of the partnership property.—*Stockwell v. Brewer*, 59 Me. 289.

Personal Estate.— Personal estate for the purposes of taxation, includes all goods, chattels, moneys, and effects, wheresoever they are; all vessels, at home or abroad; all obligations for money or other property; money at interest, and debts due the persons to be taxed more than they are owing; all public stocks and securities; all shares in moneyed and other corporations within or without the state, except as otherwise provided by law; all annuities payable to the person to be taxed, when the capital of such annuity is not taxed in this state; and all other

property, included in the last preceding state valuation for the purposes of taxation. *Ibid.*, S. 5.

A corporation owning personal property, not composing a part of its capital, is liable to be taxed for it in the town of its established place of business.—*Augusta Bank v. Augusta*, 36 Me. 259.

The statute includes shares in national banks. *Stetson v. Bangor*, 56 Me. 288.

An award by the committee of arbitration on the Alabama claims held not liable to taxation until an appropriation was made by congress for the payment of the award.—*Bucksport v. Woodman*, 68 Me. 33.

Personalty Taxed Where Owner Resides.—All personal property within or without the state, except in cases enumerated in section thirteen shall be assessed to the owner in the town where he is an inhabitant on the first day of each April. C. 9, S. 12.

All personal property belonging to a corporation must be assessed to it if it has not been assessed to the shareholders.—*Baldwin v. Trustees of Ministerial Fund*, 37 Me. 371.

Where a person was taxed for personal estate by the assessors of a town of which he was not an inhabitant, and was compelled to pay the tax, which he paid under protest, he may recover the same in a suit against the town for money had and received.—*Hathaway v. Addison*, 48 Me. 443.

The word "inhabitant" construed to mean a resident in any place. To establish residence in a place, there must be personal presence without any present intention to depart.—*Church v. Rowell*, 49 Me. 369.

An inhabitant who left A. on 30th March, intending to reside thereafter in C., arriving in B. on April 1st and the next day at C., where he established his residence, was taxable in A. on 1st April.—*Littlefield v. Brooks*, 50 Me. 476.

Logs, timber, etc., intended to be sold in a town in which the owner does not reside but where on the first day of April he occupies a mill, store, or wharf, are rightfully taxed in such town, although they may not have actually arrived in the town on that day, *provided* they are in the course of the year brought there and manufactured.—*Ellsworth v. Brown*, 53 Me. 520.

The law as existing in 1865 and 1866 taken in connection with Act of Congress of June 3, 1864, c. 106, did not authorize the assessors of a city or town in which a national bank was located to assess taxes for state, county and municipal purposes, upon the stock of such bank owned by non-residents.—*Abbott v. Bangor*, 54 Me. 540.

Personal property belonging to a railroad corporation, but not composing any part of its capital stock, is liable to be taxed where the corporation has its place of business.—*Railroad Co. v. Saco*, 60 Me. 200.

On March 30th, a person having previously disposed of the greater portion of his furniture and other personal effects, departed from Bangor, where he had previously boarded for several years, arrived in New York on April 1st, engaged a boarding place, and went into business there, in pursuance of an agreement entered into some time before. *Held*, that he was not liable to taxation in Bangor on April 1st.—*Parsons v. Bangor*, 61 Me. 459.

An award by the court of commissioners of Alabama claims is not a debt due to be taxed until an appropriation is made by Congress for payment of the award.—*Bucksport v. Woodman*, 68 Me. 33.

Personal property of a life insurance company in which its annual earnings and premiums are invested is not within the meaning of the seventh clause of section thirteen.—*Portland v. Insurance Co.*, 79 Me. 233.

A cotton broker residing elsewhere had a desk in a town and kept cotton in warehouses, which was shipped from there after sale, but he had no direction or control of the warehouses. *Held*, that he did not occupy a store or shop, and was not liable to a tax.—*Martin v. Portland*, 81 Me. 296.

Plaintiff resided in L. and caused to be cut from land owned by him large quantities of wood which he had conveyed to a landing at the sea-shore before April 1, 1888, there to remain until sold. The wood was sold during the year from time to time, as there was demand for it. *Held*, that the wood was personal property employed in trade within the meaning of the statute.—*Gower v. Jonesboro*, 83 Me. 145.

In an action of debt to recover a tax on personal property it is a material averment to allege that defendant was an inhabitant of the town.—*Rockland v. Farnsworth*, 83 Me. 228.

A non-resident hired space upon a wharf and piled fire-wood upon it to be shipped during the spring and summer to another place. *Held*, that the wood was merely on the wharf in transit, and was not liable to taxation.—*Creamer v. Bremen*, 91 Me. 511.

Exceptions.—The excepted cases referred to in section twelve are the following:

I. All personal property employed in trade, in the erection of buildings or vessels, or in the mechanic arts, shall be taxed in the town where so employed on the first day of each April; *provided*, that the owner, his servant, sub-contractor, or agent, so employing it, occupies any store, shop, mill, wharf, landing place, or ship yard therein for the purpose of such employment. C. 9, S. 13, cl. I.

The occupancy of a portion of a wharf by a non-resident, assigned to him by metes and bounds, on which lumber was to be placed, awaiting sale or shipment, the use to continue under a written lease for a fixed and long period of time, *held* to constitute the occupant an owner of the premises for the time being and taxable under the statute.—*Desmond v. Machias Port*, 48 Me. 478.

Logs and timber to be manufactured and sold in some other town than that in which the owner resides, but in which he occupies a mill, store, or wharf are rightfully taxed in such town, even though they have not actually arrived there on the first day of April.—*Ellsworth v. Brown*, 53 Me. 519; *Gower v. Jonesboro*, 83 Me. 145; *Creamer v. Bremen*, 91 Me. 512.

Piling sawn lumber on a wharf and paying wharfage do not constitute occupation under the statute.—*Stockwell v. Brewer*, 59 Me. 289.

A non-resident cotton broker who occupied a desk in a town, and had cotton stored in warehouses there not owned or controlled by him, not an agent for another and selling only by samples, *held* not to occupy a store or shop within the meaning of the statute.—*Martin v. Portland*, 81 Me. 296.

Logs destined for a mill at Farmingdale, owned by an inhabitant of Portland, were rightfully taxed at Farmingdale, although they did not arrive there till after June 1 of the year in which they were taxed.—*Farmingdale v. Berlin Mills Co.*, 93 Me. 333.

II. Personal property which on the first day of each April is within the state, and owned by persons residing out of the state, or by persons unknown; except vessels built, in process of construction, or undergoing repairs, and hides and the leather, the product thereof, when it appears that the hides were sent into the state to be tanned, and to be carried out of the state when tanned, shall be taxed to the person having the same in possession, or to the person owning or occupying any store, shop, mill, wharf, landing, ship yard, or other place therein where said property is on said day, and a lien is created on said property in behalf of such person, which he may enforce for the repayment of all sums by him lawfully paid in discharge of the tax. A lien is also

created upon the property for the payment of the tax, which may be enforced, by the constable or collector to whom the tax is committed, by a sale of the property, as provided in sections twelve, eighteen, and nineteen of chapter ten. If any person pays more than his proportionate part of such tax, or if his own goods or property are applied to the payment and discharge of the whole tax, he may recover of the owner such owner's proper share thereof. Persons engaged in the tanning of leather in the state, shall on or before the first day of each April, furnish to the assessors of the town where they are carrying on said business, a full account, on oath, of all hides and leather on hand received by them from without the state, and all hides and leather on hand from beasts slaughtered in the state, which last named hides and leather shall be taxed in the town where they were tanned. *Ibid.*, cl. II.

III. Machinery employed in any branch of manufacture, goods manufactured or unmanufactured, and real estate belonging to any corporation, except when otherwise expressly provided, shall be assessed to such corporation in the town, or place where they are situated or employed; and in assessing stockholders for their shares in any such corporation, their proportional part of the assessed value of such machinery, goods and real estate, shall be deducted from the value of such shares. *Ibid.*, cl. III.

The real estate and machinery of a railroad corporation are liable to taxation in the town where they are situated.—*Cumberland Marine Railway v. Portland*, 37 Me. 446.

The personal property of a railroad corporation is taxable in the town where the corporation has its place of business.—*Railroad Company v. Saco*, 60 Me. 201.

The part of a toll bridge within the town of Kittery is taxable as real estate in that town.—*Kittery v. Portsmouth Bridge*, 78 Me. 97.

It is error for county commissioners to place a valuation upon shares of stock in a corporation above that placed upon it by the assessors.—*Wheeler v. County Commissioners*, 88 Me. 180.

IV. All mules, horses, neat cattle, sheep and swine shall be taxed in the town where they are kept on the first day of each April, to the owner, or person who has them in possession at that time. All such animals, which are in any other town, than that in which the owner or possessor resides, for pasturing or any other temporary purpose on said first day of April, shall be taxed to such owner or possessor in the town where he resides; and all such animals, which are out of the state, or in any unincorporated place in the state on said first day of April, but owned by, or in charge and possession of any person residing in any town, shall be taxed to such owner or possessor in the town where he resides. If a town line so divides a farm that the dwelling-house is in one town, and the barn or outbuildings or any part of them is in another, such animals kept for the use of said farm, shall be taxed in the town where the house is. *Ibid.*, cl. IV.

In case of wrongful assessment the remedy is by application to the assessors for an abatement. Assumpsit against the town cannot be maintained.—*Hemingway v. Machias*, 33 Me. 445.

V. Personal property belonging to minors under guardianship, shall be assessed to the guardian in the place where he is an inhabitant. The personal property of all other persons under guardianship, shall be assessed to the guardian in the town where the ward is an inhabitant.

VI. Personal property held in trust by an executor, administrator, or trustee, the income of which is to be paid to any other person, shall be assessed to such executor, administrator, or trustee, in the place where the person to whom the income is payable as aforesaid, is an inhabitant. But if the person to whom the income is payable as aforesaid, resides out of the state, such personal property shall be assessed to such executor, administrator, or trustee, in the place where he resides. *Ibid.*, cls. V. VI.

Non-resident testamentary trustees cannot be taxed on property which has been removed from the state.—*Augusta v. Kimball*, 91 Me. 605.

Taxes upon bonds held by an executor for the use of a married woman are to be assessed against her husband.—*Gould v. Graves*, 80 Me. 509.

VII. Personal property placed in the hands of any corporation as an accumulating fund for the future benefit of heirs or other persons, shall be assessed to the person for whose benefit it is accumulating, if within the state, otherwise, to the person so placing it, or his executors, or administrators, until a trustee is appointed to take charge of it or its income, and then to such trustee. *Ibid.*, cl. VII.

Personal property in which the earnings and premiums of a life insurance company are invested are not within the meaning of the seventh clause of the statute.—*Portland v. Union Mut. Life Ins. Co.*, 79 Me. 233.

VIII. The personal property of deceased persons in the hands of their executors or administrators not distributed, shall be assessed to the executors or administrators in the town where the deceased last dwelt, until they give notice to the assessors that said property has been distributed and paid to the persons entitled to receive it. If the deceased at the time of his death did not reside in the state, such property shall be assessed in the town in which such executors or administrators live. Before the appointment of executors or administrators, the property of deceased persons shall be assessed to the estate of the deceased in the town where he last dwelt, if in this state, otherwise in the town where the property is on the first day of April, and the executors or administrators subsequently appointed shall be liable for the tax so assessed. *Ibid.*, cl. VIII.

A tax on the property of a deceased intestate after the appointment and qualification of an administrator cannot be assessed against the estate, but may be assessed against the administrator.—*Fairfield v. Woodman*, 76 Me. 551.

The misdescription, "administrators" instead of "executors," in the assessment, is not a fatal mistake, and evidence is admissible to show that the executors were the persons intended.—*Bath v. Reid*, 78 Me. 282.

Undervaluation is not an "omission," and does not justify a supplemental assessment.—*Dresden v. Bridge*, 90 Me. 493.

IX. Personal property held by religious societies shall be assessed to the treasurer thereof in the town where they usually hold their meetings. *Ibid.*, Cl. IX.

A state corporation organized for the promulgation and diffusion of Christian knowledge and intelligence by domestic missions, held to be a "charitable institution" within the meaning of the statute.—*The Maine Baptist Missionary Convention v. Portland*, 65 Me. 94.

X. Personal property in another state or county on the first day of each April, and legally taxed there. *Ibid.*, cl. X.

Poll Tax, Where Assessed.—A poll tax shall be assessed upon every male inhabitant of the state above the age of twenty-one years whether a citizen of the United States or an alien, in the manner provided by law, unless he is exempted therefrom by this chapter, which said poll tax shall not exceed three dollars and shall not be less than one dollar. *Ibid.*, S. 1.

The poll tax shall be assessed on each taxable person in the place where he is an inhabitant on the first day of each April. No person shall be considered an inhabitant of a place on account of residing there as a student in a literary seminary. *Ibid.*, S. 7.

Sales of land of resident owners made by a collector for non-payment of taxes are invalid unless it appear from the advertisements of sale that nine months have elapsed from the date of assessment.—*Hobbs v. Clements*, 32 Me. 67.

Those having legal ownership are liable for taxes on the property. The trustees of a fund for the support of the gospel ministry though living in different towns are liable to be assessed for such fund in the town where the income is applied.—*Baldwin v. Trustees Ministerial Fund*, 37 Me. 369.

The statute affords no protection to the assessors for a wrongful assessment of a poll tax upon a person not liable.—*Herriman v. Stowers*, 43 Me. 499; *Hartland v. Church*, 47 Me. 172.

A domicile once gained continues until a new one is acquired. While in transit the old domicile remains.—*Littlefield v. Brooks*, 50 Me. 476.

A person may show that he was not an inhabitant at the time he was assessed in an action to recover a poll-tax.—*McCrillis v. Mansfield*, 64 Me. 198.

The domicile of a party in any particular locality is acquired by a union of intent and presence.—*Stockton v. Staples*, 66 Me. 198.

Discharged Soldiers and Sailors.—Every honorably discharged soldier or sailor who served in the army or navy of the United States in the war of 1861, residing in this state, who is not assessed for taxes in his own town for more than five hundred dollars is hereby forever exempt from the assessment and payment of a poll tax within any city, town, or plantation in this state. P. L., 1905, C. 163.

Poultry; Returns.—Assessors of taxes when taking the inventory required to be taken on the first day of April of each fifth year after the year eighteen hundred and ninety-eight, shall enumerate the number of all kinds of poultry and forthwith return the same to the board of state assessors with their estimate of the value of the eggs and poultry,

stated separately, produced during the year preceding; keeping their returns for each kind of poultry separate and distinct. Said property shall not be included in the tax list. C. 8, S. 16.

Railroad Buildings; Non-Resident Lands.—The buildings of every railroad corporation or association, whether within or without the located right of way, and its lands and fixtures outside of its located right of way, are subject to taxation by the cities and towns in which the same are situated, as other property is taxed therein, and shall be regarded as non-resident land. C. 9, S. 4.

Real Estate, What Included.—Real estate, for the purposes of taxation, except as provided in section six, includes all lands in the state and all buildings erected on or affixed to the same, and all townships and tracts of land, the fee of which has passed from the state since the year eighteen hundred and fifty, and all interest in timber upon public lands derived by permits granted by the commonwealth of Massachusetts; interest and improvements in land, the fee of which is in the state; and interest by contract or otherwise in land exempt from taxation. *Ibid.*, S. 3.

A tax assessed on a township owned by Massachusetts to defray the expense of building a road through it was illegal, as contravening the terms of the act of separation.—*Emerson v. Washington Co.*, 9 Me. 93.

Depots and other erections of railroad corporations upon land owned by them are not exempted from taxation.—*Railroad Co. v. Saco*, 60 Me. 198.

A boom extending across a river is taxable as real estate.—*Hall v. Benton*, 69 Me. 347.

Unimproved land may be taxed to an owner residing in another town in the state.—*Oldtown v. Blake*, 74 Me. 284.

Buildings and other property of municipal corporations appropriated to public uses are exempt from taxation.—*Camden v. Village Corporation*, 77 Me. 530.

Where Assessed.—Taxes on real estate shall be assessed in the town where the estate lies, to the owner or person in possession thereof on the first day of each April. In cases of mortgaged real estate, the mortgagor for taxation, shall be deemed the owner, until the mortgagee takes possession, after which the mortgagee shall be deemed the owner. *Ibid.*, S. 8.

Sales of land of resident owners for the non-payment of taxes are invalid unless it appear from the advertisements of the sale that nine months have elapsed from the date of the assessment.—*Hobbs v. Clements*, 32 Me. 69.

A town or city cannot lawfully assess the mortgagee of land who is not in possession, and has never entered to foreclose.—*Coombs v. Warren*, 34 Me. 89.

While the mortgagor is in possession of the land it is his duty to pay the taxes on it.—*Williams v. Hilton*, 35 Me. 554.

The liability of an estate to taxation relates back to April first in each year.—*Egery v. Woodward*, 56 Me. 46.

Unimproved land may be taxed to an owner residing in another town in the state.—*Oldtown v. Blake*, 74 Me. 284.

Water pipes, hydrants and conduits of a water company, laid through the streets of a town or city are taxable as real estate to the company in posses-

sion of them in the town or city where they are laid.—*Paris v. Norway Water Co.*, 85 Me. 331.

A cottage and land held by a tenant under a parol license was rightfully assessed to him.—*Fowcroft v. Straw*, 86 Me. 77.

Real and Personal Estate.—All real property within the state, all personal property of inhabitants of the state, and all personal property hereinafter specified of persons not inhabitants of the state, is subject to taxation as hereinafter provided. *Ibid.*, S. 2.

The clause in the act of separation, exempting lands of Massachusetts from taxation while the title remains in the commonwealth, means the legal not the equitable title to such lands.—*Emerson v. Co. of Washington*, 9 Me. 88.

The term "inhabitants" embraces bodies corporate, and a corporation having a beneficial interest in property is subject to taxation. Trustees of a fund for the support of the ministry are liable to be assessed for the fund in the town where the interest is applied.—*Baldwin v. Trustees of Ministerial Fund*, 37 Me. 371.

Depots and other erections of railroad corporations upon lands owned by them are liable to taxation. So personal property belonging to them not composing any part of their capital stock is liable to be taxed where the corporations have their places of business.—*Railroad Co. v. Saco*, 60 Me. 198.

Property of municipal corporations used for public purposes is exempt from taxation.—*Camden v. Village Corporation*, 77 Me. 530.

Record; Invoice.—The assessors shall make a record of their assessment and of the invoice and valuation from which it was made; and before the taxes are committed to the officer for collection, they shall deposit it, or a copy of it, in the assessor's office, if any, otherwise with the town clerk, there to remain; and any place, where the assessors usually meet to transact business and keep their papers or books, shall be considered their office. *Ibid.*, S. 87.

The requirement that a record of the assessment and inventory be deposited in the assessors' office, if any, otherwise with the town clerk before the taxes are committed to the collector is peremptory, and a compliance with it is essential.—*Greene v. Lunt*, 58 Me. 529, cites *Brown v. Veazie*, 25 Me. 359.

A failure on the part of the assessors to lodge the record in the assessors' or town clerk's office before committing the warrant and list to the collector, is not fatal, if the town can prove an assessment regularly made under the hands of the assessors by other legal evidence.—*Norridgewock v. Walker*, 71 Me. 183.

The lists of taxes committed to the collector by the assessors under their hands is an original paper, and proof of the assessment.—*Howe v. Moulton*, 87 Me. 122.

Assessors of taxes are public officers. In the discharge of their duties, they are not subject to the direction or control of the municipality. No element of principal and agent exists in their relations to the municipality. It is not liable to an action for their omissions or mistakes, unless made so by statute.—*Rockland v. Farnsworth*, 93 Me. 183.

An entry upon the record of the first assessment of a memorandum of a supplementary assessment held insufficient, in the absence of any original supplementary assessment duly certified under the hands of the assessors.—*Topsham v. Purinton*, 94 Me. 358.

Rules for Assessment.—In the assessment of all state, county, town, plantation, parish or society taxes, assessors shall govern themselves by

this chapter, except in parishes and societies where different provision for assessing their taxes is made; and shall assess on the taxable polls therein in accordance with section one of this chapter, such part of the whole sum to be raised as they deem expedient; and the residue of such taxes shall be assessed on the estates according to their value. C. 9, S. 38.

School Returns, Annual.—The assessors, or municipal officers of each town, shall, on or before the first day of each May, make to the state superintendent of public schools a certificate, under oath, embracing the following items:

I. The amount voted by the town for common schools at the preceding annual meeting.

II. The amount of school moneys payable to the town from the state treasury during the year ending with the first day of the preceding April.

III. The amount of money actually expended for common schools during the last school year.

IV. The amount of school moneys unexpended.

V. Answers to such other inquiries as are presented to secure a full and complete statement of school revenues and expenditures. C. 15, S. 28.

Standing Wood, Bark and Timber.—Whenever the owner of real estate notifies the assessors that any part of the wood, bark and timber, standing thereon has been sold by contract in writing, and exhibits to them proper evidence, they shall assess such wood, bark and timber to the purchaser. C. 9, S. 9.

State Assessors, Fix Valuations When.—If the assessors of any town, or one of them, shall fail to appear before said board of equalization or to transmit to them the lists hereinbefore named within ten days after the mailing or publication of notice or notices to them, to so appear or transmit said lists, the said board may in its discretion report the valuation of the estates and property and lists of polls liable to taxation in the town so in default, as it shall deem just and equitable. C. 8, S. 6.

The board of state assessors shall equalize and adjust the assessment list of each town, by adding to or deducting from it such amount as will make it equal to its full market value. *Ibid.*, S. 8.

Meetings.—They shall give to each board of town assessors a notice by mail of the time and place of their meetings. Each board of town assessors or some member or members of each of them, shall attend said meeting, having with them the then last list of books giving the valuation of all taxable property in their respective towns. They shall answer, under oath if required, such questions pertaining to the valuation of the property in their towns as the board of state assessors may put to them. Said meeting shall be under the general direction of the

board of state assessors, and governed by such rules of order as said board shall make and announce.

Any town whose assessors shall fail to attend said meetings, without excuse satisfactory to the board of state assessors, shall be liable to pay the reasonable expenses of the board or of any person appointed by it incurred in making examination of the lists or books of said town or in getting other evidence pertaining to the valuation of the property in such town. Towns shall pay to said town assessors a reasonable compensation and actual expenses incurred in complying with the requirements of this chapter. *Ibid.*, S. 5.

Returns to.—The assessors of each town shall, on or before the first day of August, annually, make and return on blank lists which shall be seasonably furnished by the board of state assessors for that purpose, aggregates of polls and of the valuation of each and every class of property assessed in their respective towns, with the total valuation and percentage of taxation, and before transmitting the same to the board of state assessors shall make and subscribe an oath or affirmation, which shall be printed on said lists, as given in the statute. *Ibid.*, S. 7.

State or County Taxes, Warrants Against Inhabitants of Town.—If the voters of a town, of which a state or county tax is required, choose assessors who neglect to assess the tax required by the warrant issued to them, and to certify it as the law directs; and if the estates of such assessors are insufficient to pay such taxes as are already provided, the treasurer of state, or of the county, as the case may be, for the time being, shall issue his warrant to the sheriff of such county, requiring him to levy, by distress and sale, such deficiency on the real and personal estates of such inhabitants; and the sheriff or his deputy shall execute such warrants, observing all the provisions mentioned in section ninety-six. C. 9, S. 98.

State Taxes; Warrants from State Treasurer.—When a state tax is imposed and required to be assessed by the proper officers of towns, the treasurer of state shall send such warrants as he is, from time to time, ordered to issue for the assessment thereof, to the assessors, requiring them forthwith to assess the sum apportioned to their town or place, and to commit their assessment to the constable or collector for collection. *Ibid.*, S. 68.

Penalty for Neglect to Assess.—If the assessors of a town refuse or neglect to assess any state tax apportioned on it, and required by the warrant of the treasurer of state to be assessed by them, they forfeit to the state the full sum mentioned in such warrant, and such treasurer shall issue his warrant to the sheriff of the county to levy said sum by distress and sale of their real and personal estate. *Ibid.*, S. 93.

Voters, Lists.—In every town where the selectmen are not assessors, the assessors on or before the first day of August in each year in which

an election of governor, senators and representatives is held, shall prepare a list of the persons whom they judge to be constitutionally qualified to vote therein at such election and deliver it to the selectmen. C. 5, S. 34.

Warrant, New Issue.— When an original warrant issued by assessors and delivered to a constable or collector for collection of a tax, has been lost or destroyed by accident, the assessors may issue a new warrant for that purpose, which shall have the same force as the original. C. 10, S. 10.

An omission in a warrant may be supplied by an amendment. An unauthorized mandate not enforced, separable from other parts of the warrant, does not vitiate it.—*Bath v. Whitmore*, 79 Me. 188.

Warrant to New Collector.— When a new collector is chosen, the assessors shall make a new warrant and deliver it to him with the bills, to collect the sums due thereon, and he shall have the same power in this collection as the original collector. *Ibid.*, S. 36.

The provisions of the law for demanding the bills of a delinquent collector and committing them to another and for issuing a new warrant of distress against him are permissive, not mandatory, remedies to be resorted to or not at the discretion of the municipal authorities.—*Gorham v. Hall*, 57 Me. 62.

A collector is responsible for no illegalities but his own. If a collector refuses to collect a tax, the town may choose another for that purpose.—*Carville v. Additon*, 62 Me. 459.

When a tax collector has once received a legal tax warrant, he becomes chargeable with the whole amount of the tax, state, county and town. If he makes no effort to collect and pays a tax himself to the treasurer, the town cannot afterwards raise a tax in order to reimburse him for such payment.—*Thorndike v. Camden*, 82 Me. 39.

Warrant for Completion of Collection.— The warrant to be issued by the assessors for the completion of the collection of taxes under the provisions of sections thirty-six and thirty-eight shall be in substance as given in the statute. *Ibid.*, S. 39.

Warrant, Excess Collected Paid to Collector.— When it appears that an insane or disqualified constable or collector had paid to the treasurer a larger sum than he had collected from the persons in his list, the assessors in their warrant to such new constable or collector, shall direct him to pay such sum to the guardian of such insane, or to such disqualified constable or collector. *Ibid.*, S. 40.

AUCTIONEERS. See "Selectmen."

AUDITOR.

An auditor of accounts is chosen annually by ballot at the annual town meeting. C. 4, SS. 12, 14.

Ballot Clerks.— Clerks of election are appointed biennially, for each polling-place, by the municipal officers of every town, to attend all elec-

tions and witness the counting of the votes cast. Of these two are designated by the municipal officers as ballot clerks, to have charge of the ballots and furnish them to voters as required by law. C. 6, S. 21.

BARK MEASURERS.

Two or more measurers of wood and bark are chosen annually at the annual town meeting. If the town fails to elect, the selectmen appoint them. C. 4, SS. 12, 14.

BUILDINGS, INSPECTORS. See "Selectmen."

Burying-grounds.—Each town to which any ancient or public burying-ground belongs is required to keep a substantial fence around it in good repair.

On petition of ten voters the municipal officers of any town may enlarge any public cemetery, or burying-ground, or incorporated cemetery or burying-ground within their town, by taking land of adjacent owners, to be paid for by the town or otherwise as the municipal officers may direct, when in their judgment public necessity requires it, *provided* that the limits thereof shall not be extended nearer any dwelling-house than twenty-five rods against the written protest of the owner.

Towns may accept and hold any donation or legacy for insuring proper care and attention to any burial lot or ground and the avenues thereof and monuments thereon, and may accept a conveyance of a burial lot upon trusts set forth in such conveyance. C. 20, SS. 3-18.

A town cannot at its own expense raise a fund even in part, the income of which is to be appropriated as a gratuity to individuals or a private corporation.—*Luques v. Dresden*, 77 Me. 186.

CLERK. See "Town Clerk."

COAL OIL INSPECTOR. See "Selectmen."

COLLECTOR OF TAXES.

Election.—Collectors of taxes are elected annually at the annual town meeting. Selectmen or assessors cannot be collectors. The treasurer and collector may be one and the same person.

Vacancies may be filled by written appointment by the municipal officers. C. 4, SS. 12, 15.

The oath of office taken by one as a constable who was chosen prior to the Revised Statutes could give no validity to his sales of land since the enactment of the Revised Statutes, for nonpayment of taxes; unless the oath was either in the form prescribed in the act of 1821 or in the Revised Statutes.—*Payson v. Hall*, 30 Me. 325.

If a collector refuses to collect a tax, the town may choose another for that purpose.—*Carville v. Additon*, 62 Me. 459.

Bond.—The assessors shall require such constable or collector to give bond for the faithful discharge of his duty, to the inhabitants of the

town, in such sum, and with such sureties, as the municipal officers approve; and bonds of collectors of plantations shall be given to the inhabitants thereof, approved by the assessors, with like conditions. C. 10, S. 14.

The refusal to find sureties for the faithful discharge of the trust by one chosen collector of taxes is a non-acceptance of the trust; even after the person chosen has taken the oath of office. The penalty for refusal to accept a town office does not extend to a tax collector.—*Morrell v. Sylvester*, 1 Me. 248.

Where the assessments committed to the collector were not signed by the assessors, he had no sufficient authority to collect the taxes, and the sureties on his official bond were not liable for the moneys collected by him.—*Fowcroft v. Nevins*, 4 Me. 75, but see *Kellar v. Savage*, 20 Me. 199.

Where a collector's bond contained a recital that he was duly chosen and was conditioned for the faithful discharge of his duty, it was *held*, in an action on the bond for not paying over moneys collected, that the sureties could not controvert the legality of his election nor of the assessment of the taxes, nor any act of the town for which they would not be liable in consequence of their suretyship.—*Ford v. Clough*, 8 Me. 341.

An agreement between a town and one of its inhabitants, that he should collect its taxes for a fixed compensation, on being chosen sole collector and constable, performed on the part of the town, is a legal contract and binding on the collector.—*Gould v. New Portland*, 15 Me. 28.

In a suit on a collector's bond, it was *held*, that it is no defence that the assessment and the warrant accompanying it had not been signed by the assessors.—*Kellar v. Savage*, 20 Me. 199.

Constables and all other town officers can only be chosen by a major vote of the votes cast at the annual town meeting.

Thus the vote of the town that whoever should make the lowest bid for collecting the taxes should be constable, will not authorize the person making such a bid to perform the duties of that office.—*Crowell v. Whittier*, 39 Me. 530.

A collector cannot be held responsible for failure to collect taxes under a defective warrant, and no recovery can be had upon his bond for such failure.—*Frankfort v. White*, 41 Me. 538.

Defects in a warrant or tax list may be a good reason for not executing a warrant, but a collector having collected money without objection by the taxpayers, is liable to account therefor, and his sureties cannot excuse themselves from paying the money collected by their principal in a bond in which they have bound themselves, "that he shall well and faithfully perform all the duties of his office."—*Orono v. Wedgwood*, 44 Me. 50.

A settlement by the selectmen with a collector in which moneys collected by him for taxes of subsequent years were used to settle for taxes collected in previous years, did not bind the town or the sureties on his several official bonds.—*Porter v. Stanley*, 47 Me. 518; *Orneville v. Pearson*, 61 Me. 552.

As to sureties on a collector's bond being affected by conditions made at the time of signing it that were not fulfilled.—*Readfield v. Shaver*, 50 Me. 36.

A bond obligating the collector "faithfully to discharge his duty as collector," although otherwise defective, is sufficient to hold him to pay over money which he has actually collected and which in equity belongs to the town.—*Trescott v. Moan*, 50 Me. 347.

The giving of a bond by a collector is not a condition precedent to his assuming the duties of the office.—*Scarborough v. Parker*, 53 Me. 252; *Boothbay v. Giles*, 68 Me. 161.

It is no defence to a suit on a collector's bond that the assessment preparatory to issuing the tax list was not signed by the assessors.—*Bethel v. Mason*, 55 Me. 501.

When a bond has been accepted by the selectmen and both parties have acted under it as a statutory bond, it will be regarded as such although it has not been approved in writing by the municipal officers.

Generally, a collector is chargeable for all taxes committed to him to enforce payment of which he has not during the period allotted for their collection exhausted his authority.—*Gorham v. Hall*, 57 Me. 62.

A town making no choice of assessors, voted that its selectmen act as assessors, and the persons so chosen made oath "faithfully and impartially to discharge the duties of selectmen and assessors," it was held that this was full compliance with the law, and that the selectmen were assessors. They may sign an assessment made by them as assessors simply.—*Gould v. Monroe*, 61 Me. 544.

In an action on a collector's bond, it is not sufficient to show his failure to account, and the commitment to him of the tax lists and warrant, if the latter directs an exemption from distress of property not exempt by statute. It must be shown that money was actually received for taxes by the collector and not accounted for by him.—*Boothbay v. Giles*, 64 Me. 403; *Orneville v. Pearson*, 61 Me. 552.

The official bond required of a collector must be a sealed instrument.

An instrument in the form of a bond but containing no seal, voluntarily executed and delivered in lieu of a bond and accepted therefor is valid.

Its acceptance is a sufficient consideration to cover all official delinquencies in not paying over money actually collected after such acceptance.—*Boothbay v. Giles*, 68 Me. 160.

Where the evidence fails to show any money in the hands of the collector not accounted for, and it is admitted that in the valuation of the assessor's books there is no description of the real estate taxed, such omission on the part of the assessors will relieve the collector of the duty of completing his collection.—*Harpwell v. Orr*, 69 Me. 333.

If without fault or negligence on his part a county treasurer is violently robbed of money belonging to the county it is a valid defense *pro tanto* to an action upon his official bond.—*Cumberland v. Pennell*, 69 Me. 357.

Taxes received by a collector under a defective warrant must be paid over to the treasurer and failure to pay is a breach of his official bond and the sureties are liable therefor.—*Brunswick v. Snow*, 73 Me. 177.

Accounts, exhibit.— Every collector of taxes shall once in two months at least exhibit to the municipal officers, or where there are none, to the assessors of his town, a just and true account of all moneys received on taxes committed to him, and produce the treasurer's receipts for money by him paid; and for neglect, he forfeits to the town two and a half per cent on the sums committed to him to collect. *Ibid.*, S. 35.

The acceptance of a collector's bond is a sufficient consideration to cover all official delinquencies in not paying over money actually collected thereafter. The statute makes it his duty to exhibit once in two months a true account of all moneys received on the taxes committed to him and produce the vouchers for money paid by him.—*Boothbay v. Giles*, 68 Me. 163.

The penalty imposed by the statute cannot be interposed by way of recoupment in defense to an action by a collector to recover from the town his agreed compensation for collecting the town's taxes.—*Bragdon v. Freedom*, 84 Me. 432.

Compensation.— When towns choose collectors, they may agree what sum shall be allowed for performance of their duties. *Ibid.*, S. 11.

In case of distress or commitment for non-payment of taxes, the officer shall have the same fees which sheriffs have for levying executions, except that travel, in case of distress, shall be computed only from the dwelling-house of the officer to the place where it is made. *Ibid.*, S. 12.

Absconding or Removed Taxpayers.— When a person taxed in a town in which he was living at the time of assessment, removes there-

from before paying his tax, the constable or collector may demand it of him in any part of the state, and, if he refuses to pay, may distrain him by his goods, and for want thereof may commit him to the jail of the county where he is found, to remain until his tax is paid; and he shall have the same power to distrain property and arrest the body in any part of the state, as in any place where the tax is assessed. *Ibid.*, S. 26.

Aid, May Demand.— Any collector impeded in collecting taxes, in the execution of his office, may require proper persons to assist him in any town where it is necessary, and any person refusing when so required, shall, on complaint, pay not exceeding six dollars at the discretion of the justice before whom the conviction is had, if it appears that such aid was necessary; and on default of payment, the justice may commit him to jail for forty-eight hours. *Ibid.*, S. 34.

Banks or Other Corporations, Notice.— The collector of a town, to whom has been committed a tax upon the stock of any bank or other corporation, except a manufacturing corporation, or corporation mentioned in section twenty-six, shall, within thirty days after the bills of assessment are delivered to him cause a written notice to be delivered to the cashier or president thereof, stating the description of stock taxed, to whom assessed, if stated in the bills, and the tax thereon. Should such tax remain unpaid for ninety days after such notice the collector may sell such stock in the manner specified in sections twenty-four and twenty-five of chapter ten. For the purpose of collecting taxes on bank or other stock, collectors may act in any town. C. 9, S. 33.

Corporate Shares, May Distrain.— For non-payment of taxes, the collector or constable may distrain the shares owned by the delinquent in the stock of any corporation; and the same proceedings shall be had as when like property is seized and sold on execution. C. 10, S. 24.

The proper officer of such corporation, on request of such constable or collector, shall give him a certificate of the shares or interest owned by the delinquent therein and issue to the purchaser certificates of such shares according to the by-laws of the corporation. *Ibid.*, S. 25.

County Taxes.— All county taxes shall be collected by the collectors or constables of the several towns and paid by them to the treasurers of their respective towns as other taxes are paid. Said treasurers shall pay such taxes to the county treasurers of their respective counties. *Ibid.*, S. 6.

Death, Accounts Unsettled.— If a collector of a town or parish dies without settling his accounts of taxes committed to him to collect, his executor or administrator, within two months after his acceptance of the trust, shall settle with such assessors for what was received by the deceased in his lifetime; with the amount so received, such executor or

administrator is chargeable as the deceased would be if living; and if he fails so to settle, when he has sufficient assets in his hands, he shall be chargeable with the whole sum committed to the deceased for collection. *Ibid.*, S. 47.

Delinquent, County Treasurer's Warrant Against.— If a collector of any town fails to pay the county tax for forty days after the time fixed therefor, the county treasurer shall issue his warrant against him in due form of law, returnable in three months from its date, directed to the sheriff or his deputy, requiring him to collect the tax, with six per cent interest thereon from the time it was payable, fifty cents for the warrant, and his own legal fees. *Ibid.*, S. 43.

Execution Against.— When the time for collecting a state tax has expired, and it is unpaid, the treasurer of state shall, at the request of the municipal officers of any town, issue his execution against the collector thereof. *Ibid.*, S. 42.

Removing or Absconding.— When a collector having taxes committed to him to collect, has removed; or in the judgment of the municipal officers, assessors, or treasurer of a town, is about to remove from the state before the time set in his warrant to make payment to such treasurer; or when the time has elapsed, and the treasurer has issued his warrant of distress; in either case said officers may call a meeting of such town to appoint a committee to settle with him for the money he has received on his tax bills, to demand and receive of him such bills, and to discharge him therefrom; said meeting may elect another constable or collector, and the assessors shall make a new warrant and deliver it to him with said bills, to collect the sums due thereon, and he shall have the same power in their collection as the original collector. *Ibid.*, S. 36.

In general, a collector of taxes becomes chargeable for all taxes committed to him in respect to which he has not exhausted his authority to enforce payment, during the period allotted for their collection, if the town insist on his liability and require payment of him.— *Gorham v. Hall*, 57 Me. 62.

If a collector refuses to collect a tax, the town may choose another for that purpose.— *Carville v. Additon*, 62 Me. 459.

If the collector neglects to execute his warrant, his liability to pay to the treasurers the amounts due them, is as living and binding as if he had collected the money.— *Thorndike v. Camden*, 82 Me. 45.

Responsible to Town for All Damages.— A deficient collector or constable shall at all times be answerable to the inhabitants for all sums which they have been obliged to pay by means of his deficiency, and for all consequent damages. *Ibid.*, S. 46.

A collector being chargeable for all taxes committed to him in respect to which he has not exhausted his authority to enforce payment, it is no defense to a suit on his bond that the individuals against whom such taxes were assessed were not at any time after he received the tax bills, of sufficient ability to pay the same.— *Gorham v. Hall*, 57 Me. 62.

Where the town accepted a note in settlement with a delinquent collector and his sureties, it was an acknowledgment of the amount due on town taxes

only. The further sum was also due for the state tax paid by the town on default of the collector.—*Richmond v. Toothaker*, 69 Me. 457.

State Treasurer's Warrant Against.—The treasurer of state shall issue a warrant of distress, signed by him, against any constable or collector to whom a tax has been committed for collection, who is negligent in paying into the public treasury the money required within the time limited by law; and shall direct it to the sheriff of the county in which such negligent officer lives, or to his deputy, returnable in sixty days from its date, to cause the sum due to be levied, with interest from the day fixed for payment, and fifty cents for the warrant, by distress and sale of such deficient officer's real or personal estate, returning any overplus that there may be, and for want thereof, to commit him to jail until he pays it; and the sheriff shall obey such warrant. Warrants not satisfied may be renewed for the amount unpaid, and shall be of like validity and executed in like manner. C. 10, S. 41.

It is the duty of an officer having arrested a delinquent collector of taxes by virtue of a treasurer's warrant of distress, to commit him to prison.—*Daggett v. Everett*, 19 Me. 373.

When the collector is a defaulter, and has not paid the state tax, the town may advance the balance of the state tax deficit to the state treasurer, even if the provisions of the statute have not been previously complied with, they being directory.—*Richmond v. Toothaker*, 69 Me. 451.

A certificate to a town treasurer by the assessors, that they have put into the hands of the collector a list of the assessments of a school district tax "with a warrant in due form of law," justifies the treasurer in issuing a warrant of distress against the collector of taxes for failure to collect such assessments and pay them into the treasury as required by law, whether the warrant from the assessors was in fact a good one or not.—*Snow v. Winchell*, 74 Me. 408.

Distress for Non-Payment.—If a person refuses to pay any part of the tax assessed against him in accordance with this chapter, the person whose duty it is to collect the same may distrain him by any of his goods and chattels not exempt, for the whole or any part of his tax, and may keep such distress for four days at the expense of the owner, and if he does not pay his tax within that time, the distress shall be openly sold at vendue by the officer for its payment. Notice of such sale shall be posted in some public place in the town, at least forty-eight hours before the expiration of said four days. *Ibid.*, S. 18.

The officer, after deducting the tax and expense of sale, shall restore the balance to the former owner with a written account of the sale and charges. *Ibid.*, S. 19.

The return of a collector upon his warrant of proceedings for distraint and sale of chattels for payment of taxes is *prima facie* evidence of his having tendered to the former owner the overplus arising from the sale above the amount of the tax and charges.—*Deane v. Washburn*, 17 Me. 100.

The return of the collector must contain an account in writing of the sale and charges.—*Blanchard v. Dow*, 32 Me. 557.

A collector legally qualified, acting within the scope of his powers under a warrant from competent authority, may thereby justify the seizure and sale by

him of the property of such delinquents as refuse to pay the taxes assessed against them. Errors in the assessment or in the proceedings of the town at the meeting at which he was chosen will not affect the matter.—*Caldwell v. Hawkins*, 40 Me. 526.

If a collector of taxes keeps the property seized beyond the time within which it could be legally sold, he thereby becomes a trespasser *ab initio*, and the owners may replevy it.—*Brackett v. Vining*, 49 Me. 356.

A collector who fails to restore the balance from sale after deducting taxes and legal expenses is a trespasser *ab initio*.—*Carter v. Allen*, 59 Me. 296.

Where a collector after selling enough to pay the tax and expense of sale, sells other property distrained, he will not become a trespasser *ab initio* as to any articles seized except such as he has sold in excess of his authority.—*Seekins v. Goodale*, 61 Me. 400.

A collector is not bound to keep or sell distrained property within the limits of the town in which it is first seized by him.

It is no objection to the legality of the collector's proceedings that one of the four days during which he kept the distress was Sunday.—*Carville v. Additon*, 62 Me. 459.

The statute requires the collector to keep the distress four days and then sell. Where a distress was taken on 5th March and advertised to be sold on 11th March, the collector was held to have been a trespasser *ab initio*.

One distraint failing, another may be made in accordance with law.—*Farnsworth Co. v. Rand*, 65 Me. 19.

When chattels distrained are to be sold in a specified time the day of seizure is excluded and the day of sale included in the reckoning. The days are consecutive and include Sunday, and when the day on which the act to be done falls on Sunday it must be done on the next day.—*Cressey v. Parks*, 75 Me. 394.

Former Collectors, Complete Collections.—When new constables or collectors are chosen and sworn before the former officers have perfected their collections, the latter shall complete the same, as if others had not been chosen and sworn. *Ibid.*, S. 23.

A collector chosen in 1856 without giving bond entered upon and continued his official duties until 1862, when upon request he gave a bond of the latter date, without sureties to the town, reciting that whereas he had been appointed collector for the year 1856, "now if the said P. shall well and faithfully discharge all the duties of said office then this obligation to be void, otherwise to remain in full force." Held, that it was a good common-law bond, was prospective and covered no past faults or omissions.—*Scarborough v. Parker*, 53 Me. 252.

Imprisonment for Non-Payment.—If a person so assessed, for twelve days after demand, refuses or neglects to pay his tax and to show the constable or collector sufficient goods and chattels to pay it, such officer may arrest and commit him to jail, until he pays it, or is discharged by law. C. 10, S. 20.

A collector of taxes is not justified by his warrant in arresting a person not liable to taxation in the town in which the tax is assessed.—*Bowker v. Lowell*, 49 Me. 430.

A collector is not entitled to any thing for committing a debtor after one year from the time the tax is committed to him.—*Orneville v. Pearson*, 61 Me. 557.

If the jailer waives the requirement of a copy of the warrant, the taxpayer may be committed to the jail without it.—*Jones v. Emerson*, 71 Me. 406.

Further Proceedings.—When an officer appointed to collect assessments by virtue of a warrant, for want of property arrests any person

and commits him to jail, he shall give an attested copy of his warrant to the jailer, and certify, under his hand, the sum that he is to pay as his tax and the costs of arresting and committing, and that for want of goods and chattels whereon to make distress, he has arrested him; and such copy and certificate are a sufficient warrant to require the jailer to receive and keep such person in custody, until he pays his tax, charges, and thirty-three cents for the copy of the warrant; but he shall have the rights and privileges, mentioned in section fifty-four. *Ibid.*, S. 61.

If the jailer receives the debtor without a copy of the warrant the delivery would be sufficient, but he would not be bound to receive him without it.—*Jones v. Emerson*, 71 Me. 407.

Where the debtor submits himself to the control of the jailer, and goes into actual confinement, he has done all that is incumbent upon him to do, and the penalty of the bond is saved.—*Hussey v. Danforth*, 77 Me. 24.

Liability for Tax.—When a person imprisoned for not paying his tax, is discharged, the officer committing him shall not be discharged from such tax without a vote of the town, unless he imprisoned him within one year after the taxes were committed to him to collect. *Ibid.*, S. 63.

Privileges of Persons Arrested.—Any person arrested or imprisoned on a warrant for the collection of a public tax, and every constable, collector, or deputy sheriff arrested or imprisoned for default in collecting taxes committed to him has the privileges, and is subject to the obligations of this chapter, as if arrested or imprisoned on execution for debt. C. 114, S. 66.

The bond to be given by one committed for nonpayment of taxes, to procure his discharge from imprisonment should be given to the assessors of the town.—*Hoxie v. Weston*, 19 Me. 322.

A bond given to the inhabitants of the town instead of the assessors held good at common law.—*Athens v. Ware*, 39 Me. 346.

A poor debtor's bond which should have run to the assessors of the town at the time the arrest was made, was held good, although made to the assessors in office at the time the tax was assessed.—*Skinner v. Lyford*, 73 Me. 282.

Instalments, Payable In, When Whole Demanded.—When a tax is made payable by instalments, and any person, who was an inhabitant of the town at the time of making such tax, and assessed therein, is about to remove therefrom before the time fixed for any payment, the collector or constable may demand and levy the whole tax, though the time for collecting any instalment has not arrived; and in default of payment he may distrain for it, or take the course provided in section twenty. C. 10, S. 22.

Itinerant Vendors, Licenses.—Every itinerant vendor intending to sell goods in any town shall file his state license and an application for a local license with the collector of taxes for such town, and before selling, offering, or exposing for sale any goods in the town shall pay to the collector for the use of the town, as a further local license fee

for such sale in the town, a sum to be computed as provided in section seven. A receipt for said local license fee when paid shall be endorsed by said collector on the back of the state license, which shall remain on file with such collector so long as such sale shall continue or such goods be kept, exposed or offered for sale in the town. C. 45, S. 6.

The collector shall forthwith give notice of such application to the assessors of the town. *Ibid.*, S. 7.

Non-residents' Improved Lands.—When the owner of improved lands living in this state, but not in the town where the estate lies, is taxed, and neglects for six months after the lists of assessment are committed to an officer for collection, to pay his tax, such officer may distrain him by his goods and chattels, and for want thereof may commit him to jail in the county where he is found. C. 10, S. 32.

In cases under the statute, the collection may be enforced by arrest and imprisonment in the county in which the delinquents may be found. The delinquent may be arrested after the time limited in the warrant.—*Hartland v. Church*, 47 Me. 169; *Brown v. Veazie*, 25 Me. 365.

Unimproved land may be taxed to an owner residing in another town in the state, under Stat. 1874, c. 232.—*Oldtown v. Blake*, 74 Me. 284.

Non-residents, Personalty.—When the owner or possessor of goods, wares and merchandise, logs, timber, boards and other lumber, stock in trade, including stock employed in the business of any of the mechanic arts, horses, mules, neat cattle, sheep, or swine, resides in any other town than the one in which such personal property is kept and taxed, the constable or collector having a tax on such property for collection may demand it of such owner or possessor in any part of the state, and on his refusal to pay, may distrain him by his goods, and for want thereof, may commit him to jail in the county where he is found until he pays it, or is discharged by law. *Ibid.*, S. 33.

Payment Already Made, as Claimed.—When the tax of any person named in the assessment does not thereby appear to have been paid, but such person declares that it was paid to the former collector, the new collector shall not distrain or commit him, without a vote of such town or parish first certified to him by its clerk. *Ibid.*, S. 57.

The provisions against a delinquent collector are not mandatory but permissive: cumulative remedies to be restored to or not at the discretion of the municipal authorities.—*Gorham v. Hall*, 57 Me. 62.

Real Estate, Sale for Taxes.—If any tax assessed on real estate and on equitable interests, assessed under section three of chapter nine remains unpaid on the second Monday in July, in the year succeeding the year in which said tax was assessed, the collector shall sell at public auction so much of such real estate or interests as is necessary for the payment of said tax, interest, and all the charges, at nine o'clock in the forenoon of said second Monday in July, at the place where the last

preceding annual town meeting was held, in towns. Detailed directions are given in the statute for giving notice and for the conduct of such sales. C. 10, SS. 73-76.

Where lands of a non-resident which are advertised to be sold for taxes, have within three years next preceding been taken from one town and annexed to another, the names of both towns must be expressed in the advertisement.—*Porter v. Whitney*, 1 Me. 306.

Where the real estate of a resident has been assessed as a non-resident, the collector must pursue the mode pointed out for non-resident taxes and is not justified in seizing and selling personal property.—*Lunt v. Wormell*, 19 Me. 100.

To make a valid title to land sold for non-payment of taxes, the purchaser must show that the provisions of law governing such sales have been punctiliously complied with.—*Brown v. Veazie*, 25 Me. 359.

Where a tax is assessed on unimproved lands of non-resident owners whose names are known, the collector should give the name of the owner in the advertisement; if assessed upon several lots of such lands of non-resident owners whose names are unknown, each lot should be valued and assessed separately.—*Shimmin v. Inman*, 26 Me. 228.

A sale held illegal where by mistake a lot of land was taxed as "real estate of a non-resident proprietor whose name is unknown," when in fact at the time and long before and after the owner of the land resided in the town where the lot was situated, and held it under a deed duly recorded.—*Barker v. Hessel-tine*, 27 Me. 354.

A forfeiture of non-resident lands for non-payment of taxes is not perfected unless nine months fully expire after the date of the assessment and before the collector makes to the treasurer a certificate of the delinquency to pay the tax; nor unless the treasurer authenticate as true the copy of his printed advertisement lodged with the clerk; nor unless it appear that the collector had a warrant from the assessors to collect the tax.—*Flint v. Sawyer*, 30 Me. 226.

A tax sale is void, if the collector making the sale was also the purchaser, though acting as the agent of another person.—*Payson v. Hall*, 30 Me. 326.

Sales of lands for taxes of resident owners made by a collector are invalid unless it appear from the advertisement of sale that nine months have elapsed from the date of assessment.—*Holbs v. Clements*, 32 Me. 67.

An agent employed by the owner of land to bid off the same when sold at auction for taxes cannot by taking the deed in his own name acquire title himself.—*Matthews v. Light*, 32 Me. 305.

Several lots belonging to a non-resident were inventoried and valued separately by the assessors, they were taxed in an aggregate sum and advertised as separate lots. Held, that a sale of them all *in solido* for a gross sum for payment of the tax conveyed no title. The return must be made within thirty days and designate or describe the land sold.—*Andrews v. Venter*, 32 Me. 394.

A town is not responsible for failure of title to land sold and conveyed by the collector for town taxes. The risk is upon the collector and purchaser.—*Packard v. New Limerick*, 34 Me. 266.

Taxes legally assessed create a lien on land which may become paramount to all other titles.—*Williams v. Hilton*, 35 Me. 547.

A sale of land for a tax upon a resident, in which was assessed not only his land but other land not owned by him, or claimed, or occupied by him, is simply void.—*Barker v. Blake*, 36 Me. 433.

The covenants in a collector's deed that the proceedings in the assessment and sale were according to law are not evidence of the facts required to pass the title.—*Phillips v. Phillips*, 40 Me. 161.

Where the statute requires the sheriff to sell so much of the land as will discharge the taxes and expenses, a sale of the whole tract is invalid.

Any one interested in lands sold *in solido* may tender payment for all the cotenants as well as for himself.—*Loomis v. Pingree*, 43 Me. 299.

"Highest bidder" means the one who will pay the tax and charges for the least quantity of land. Where the whole tract is sold, it is necessary for the collector to certify in his return to the town clerk *that it was necessary to sell the whole to pay the taxes.*—*Lovejoy v. Lunt*, 48 Me. 377.

Taxes assessed for a legal purpose but in an irregular or defective manner cannot be recovered back by a resident in an action of assumpsit against the town.—*Rogers v. Greenbush*, 58 Me. 390.

In the assessment of taxes on land of resident owners, the parcels must be definitely and distinctly described or no lien will attach.—*Greene v. Lunt*, 58 Me. 518.

No title passed by the collector's deed to certain parcels for lack of sufficient description.—*Greene v. Lunt*, 58 Me. 534.

In order to authorize a sale of a whole tract for taxes, it should distinctly appear of record that the sale of the whole was required to pay the tax, interest and charges; if not, the sale will be invalid.—*French v. Patterson*, 61 Me. 203.

Each lot of land is distinct for purposes of taxation, hence a valuation and assessment in gross of two distinct parcels is void. The treasurer's notice of sale must give an accurate description of the land to be sold to identify it. The record must show sale at auction.—*Nason v. Ricker*, 63 Me. 381.

The deed from the treasurer should run in the name of the town not in that of the treasurer simply.—*Treat v. Smith*, 68 Me. 394.

It is only by strict adherence to the mode prescribed by law that real estate can be conveyed for non-payment of taxes—the same being for an inadequate consideration and against the will of the owner.—*Whitmore v. Learned*, 70 Me. 276.

When a collector's deed is void on its face, equity will not intervene to remove a cloud on the title of the land embraced in it.—*Briggs v. Johnson*, 71 Me. 237.

If the recitals in the tax deed do not show that the tax remained unpaid for nine months from the date of the assessment before giving notice of sale, the deed will not pass title. Also, the recital must show that notices of the sale were posted in the same manner and the same places as warrants for town meetings are posted.—*Wiggin v. Temple*, 73 Me. 380.

A tax deed is void which recites that an entire lot of land was sold, and does not state that it was necessary to sell the whole to pay the taxes.—*Brooks v. Woodin*, 74 Me. 222.

The collector's deed should recite that he exposed for sale and sought offers for a fractional part of the premises sufficient to pay the tax and legal charges, and that he could obtain no bid therefor. The deed should state the time when the collector gave notice, where the notices were posted, and to whom as owner or occupant of the premises the notice was given of the time and place of sale. Recitals of the collector in a tax deed are not evidence of the facts recited.—*Ladd v. Dickey*, 84 Me. 190.

A tax sale is invalid when the copy of the notice filed by the collector with the town clerk does not have the certificate, that the collector had posted the notice of the sale as required by law.—*Bowler v. Brown*, 84 Me. 377.

The recital in a collector's deed that the land was sold for an unpaid tax assessed agreeably to law does not amount to proof that the tax was lawfully assessed or was an incumbrance on the land.—*Maddocks v. Stevens*, 89 Me. 337.

In the assessment which establishes the lien on land and forms the basis of all subsequent proceedings there must be a definite and distinct description of the land upon which the tax is intended to be assessed.—*Burgess v. Robinson*, 95 Me. 124.

A statement in a treasurer's return of the sale of land for non-payment of taxes, the statement "that it became necessary to sell the whole amount of the real estate," without any statement of facts showing such necessity, is not sufficient to sustain a title under such sale.—*Milliken v. Houghton*, 97 Me. 447.

Real Estate Bid Off to the Town.—The municipal officers may employ one of their own number, or some other person, to attend the sale for taxes of any real estate, in which the town is interested, and bid therefor a sum sufficient to pay the amount due and charges in behalf of the town, and the deed shall be made to it. *Ibid.*, S. 85.

If the purchaser of land sold for taxes fails to pay the collector within twenty days after the sale, the amount bid by him, the sale shall be void and the city or town in which such sale was made shall be deemed the purchaser of the land so sold, the same as if purchased by some one in behalf of the city or town under section eighty-five of chapter ten.

If a city or town becomes the purchaser the deed to the land shall set forth the fact that a sale was duly made, the amount bid for the land included in the deed and that the purchaser failed to pay the amount bid within twenty days after the sale. P. L. 1905, C. 27.

Returns.—The collector making any sale of real estate for non-payment of taxes, shall, within thirty days after such sale, make a return, with a particular statement of his doings in making such sale, to the clerk of his town; who shall record it in the town records; and said return, or if lost or destroyed, an attested copy of the record thereof, shall be evidence of the facts therein set forth in all cases where such collector is not personally interested. The collector's return to the town clerk shall be in substance as given in the statute. C. 10, S. 80.

Receipts Given.—When a tax is paid to a collector or constable, he shall give a receipt therefor on demand; and if he neglects or refuses so to do, he forfeits five dollars to the aggrieved party, to be recovered in an action of debt. *Ibid.*, S. 16.

Sheriff to Collect.—When a town neglects to choose and the selectmen to appoint any constable or collector to collect a state or county tax, the sheriff of the county shall collect it, on receiving an assessment thereof, with a warrant under the hands of the assessors of such town, duly chosen, or appointed by the county commissioners, as the case may be. *Ibid.*, S. 58.

State Taxes Collected.—All state taxes shall be collected by the collectors or constables of the several towns and paid by them, to the treasurers of their respective towns as other taxes are paid. Said treasurers shall pay such taxes to the treasurer of state. *Ibid.*, S. 3.

Suit by Collector or His Administrator.—Any collector of taxes, or his executor or administrator, may, after demand for payment, sue in his own name for any tax, in an action of debt, and no trial justice or judge of any municipal or police court before whom such suit is brought, is incompetent to try the same by reason of his residence in the town assessing said tax. Where before suit the person taxed dies or

removes to any other town, parish or place in the state, or, being an unmarried woman, marries, the aforesaid demand is not requisite, but the plaintiff shall recover no costs unless payment was demanded before suit. *Ibid.*, S. 27.

An action cannot be maintained by a town collector on a promise to pay him a tax if he will forbear to collect the same in the manner required by law, although by such neglect he becomes liable for the tax and actually pays it to the town.—*Packard v. Tisdale*, 50 Me. 377.

The record of the warrant to the collector is a sufficient record of his appointment.—*Gould v. Monroe*, 61 Me. 546.

The collector in order to maintain an action to recover a tax must make a personal demand upon the debtor unless such demand is excused by the absence of the debtor from home, or some other good reason, the demand being so explicit that the defendant will know that a suit might follow if he neglected to comply with the demand.—*Parks v. Cressey*, 77 Me. 55.

The collection of an entire school-district tax assessed without authority of law may be perpetually enjoined on a bill brought by all the taxpayers of the district jointly, or by any number of them on behalf of themselves and all the others.—*Carlton v. Newman*, 77 Me. 410.

A tax assessed against the defendant "and wife" may be recovered in an action of debt against the husband alone, if the nonjoinder of the wife be not pleaded in abatement.—*Topsham v. Blondell*, 82 Me. 156.

It is no bar to an action of debt by the collector of a village corporation that the collector, in a settlement with the treasurer, has paid all the taxes including the tax sued for, before the action was commenced; it appearing that the defendant did not authorize the payment, and that it was not made with intent to extinguish the tax or to relieve the defendant from liability to pay it.—*Lord v. Parker*, 83 Me. 533.

A direction by the selectmen to the collector to bring suit for the collection of taxes, should be as to an action or actions against a particular party or parties.—*Orono v. Emery*, 86 Me. 366.

Suit to Enforce Tax Lien.—The lien on real estate created by section three of this chapter may be enforced by an action of debt under the conditions set out in the statute. *Ibid.*, S. 28.

The recitals in the deed of a collector, of lands sold for the non-payment of taxes, are not evidence of the existence of a tax lawfully assessed so as to constitute a breach of covenant against encumbrances. *Maddocks v. Stevens*, 89 Me. 337 and cases cited.

Suit by Order of Selectmen.—In addition to other provisions for the collection of taxes legally assessed, the selectmen of any town may in writing direct an action of debt to be commenced in the name of the inhabitants of such town against the party liable; but no such defendant is liable for any costs of suit, unless it appears by the declaration and by proof that payment of said tax had been duly demanded before suit.

And no execution shall run against the body of any person, issued on a judgment recovered for the collection of any poll tax. *Ibid.*, S. 65.

Domicile is acquired only by a union of intent and of presence in the place.—*Stockton v. Staples*, 66 Me. 197.

The collector is the proper person to make the demand.—*York v. Goodwin*, 67 Me. 261.

In a suit for taxes a declaration which alleges no facts showing that defendant was liable to taxation in the town for the years during which the taxes were assessed is bad on demurrer.—*Vassalboro' v. Smart*, 70 Me. 304.

A collector who has not been sworn is competent to make the demand.—*Oldtown v. Blake*, 74 Me. 280.

An action for taxes assessed against the "estate" of a deceased person cannot be maintained against the administrator.—*Fairfield v. Woodman*, 76 Me. 550.

An action against the administrators which should have been brought against the executors of an estate is not a fatal mistake, and parol evidence is admissible to show that the executors were the persons intended to be taxed.—*Bath v. Reed*, 78 Me. 278.

An unauthorized mandate in a warrant to collect interest on assessments, not enforced or attempted to be carried out, does not vitiate the warrant.—*Bath v. Whittemore*, 79 Me. 183.

Where no demand is made before the action is brought, costs cannot be recovered.—*Topsham v. Blondell*, 82 Me. 157.

In an action to recover taxes assessed upon personal property the averment that defendant was an inhabitant of the town is material.—*Rockland v. Farnsworth*, 83 Me. 229.

It is no defense to an action to recover taxes that the assessors made only one valuation for each tax, state, county and town, and made but one assessment for the whole, nor that they made and listed one appraisal in gross of three lots, instead of a separate appraisal of each lot.—*Rockland v. Ulmer*, 84 Me. 505.

A general direction to begin actions against any and all taxpayers who refuse or fail to pay their taxes is not sufficient. Each case should receive a separate consideration. An oral direction is not sufficient. *Cape Elizabeth v. Boyd*, 86 Me. 319; *Orono v. Emery, Ibid.*, 364.

A formal admission that a demand was made at the date of the writ is sufficient evidence of a demand before suit. Taxes do not bear interest unless a vote imposing interest is passed when the taxes were imposed. *Rockland v. Ulmer*, 87 Me. 357.

The averment that the selectmen directed in writing the action to be brought is necessary. *Wellington v. Small*, 89 Me. 154.

To create an estoppel the judgment must be rendered upon the merits of the case and the same subject matter. Cases reviewed. *Emden v. Lisherness*, 89 Me. 578.

Greater particularity and precision is necessary in cases where a forfeiture is sought to be enforced than in a suit for the recovery of unpaid taxes, merely. *Charleston v. Lowry*, 89 Me. 582.

Demand by the collector of the superintendent of defendant's waterworks and by the town's agent in writing of the president and directors of the defendant company, held sufficient to warrant recovery of costs. *Dover v. Water Co.*, 90 Me. 182.

Tax Bills, Refusal to Give Up, Penalty.—If a collector or constable refuses to deliver the bills of assessment, and to pay all moneys in his hands collected by him, when duly demanded, he forfeits two hundred dollars to the town or parish, as the case may be, and is liable to pay what remains due on said bills of assessment. C. 10, S. 37.

Generally, a collector is chargeable for all taxes committed to him, to enforce the payment of which he has not, during the period allotted for their collection, exhausted his authority.—*Gorham v. Hall*, 57 Me. 62.

Town Pays, When Collector Fails.—If a deficient constable or collector has no estate which can be distrained, and his person cannot be found within three months after a warrant of distress issues from the treasurer of state, or, if being committed to jail, he does not within three

months satisfy it, his town shall, within three months more, pay to the state the sums due from him. *Ibid.*, S. 44.

When the defendant is a defaulter, and has not paid the state tax, the town may advance the residue of the tax to the state treasurer, and for such advances the collector and his sureties are liable.—*Richmond v. Toothaker*, 69 Me. 458.

Treasurer, Eligibility for.— A collector of taxes is not eligible to the office of treasurer until he has completed his duties under his warrant and had a final settlement with the town. P. L. 1903, C. 45.

Warrant.— Every collector or constable, required to collect taxes, shall receive a warrant from the selectmen or assessors and shall faithfully obey its directions. C. 10, S. 13.

A warrant may be effective even if it does not follow strictly the form prescribed by the statute. If it be "in substance" conformable to the law, that will be sufficient.—*Mussey v. White*, 3 Me. 301.

Where a tax-bill was not signed by the assessors it was held that the collector did not have sufficient authority to collect it.—*Foxcroft v. Nevens*, 4 Me. 72.

Where a collector's bond recites that he was duly chosen and was conditioned for the faithful discharge of his duty, it was held that in an action on the bond for failure to pay over moneys collected, the sureties were estopped from setting up as a defense that the meeting which elected the collector was not legally held.—*Ford v. Clough*, 8 Me. 334.

An agreement between a town and one of its inhabitants that he should collect the taxes for a fixed compensation on being chosen sole collector and constable, performed on the part of the town, is a legal contract and binding on the collector.—*Gould v. New Portland*, 15 Me. 28.

The collector is bound to obey a warrant in due form and issuing from the assessors, though they may not have complied with every requisition of law anterior to issuing it.—*Kellar v. Savage*, 20 Me. 199.

The collector of taxes of a town has the same powers and is under the same obligations to collect school-district taxes as in cases of town taxes.—*Smyth v. Titcomb*, 31 Me. 272.

A warrant containing no terms giving authority to distrain or commit is defective, and a clause purporting to extend to it the powers granted in a previous one to the same person in due form, would give no greater authority than would a similar reference to the section of the statute from which all power in the premises is derived.—*Frankfort v. White*, 41 Me. 538.

Defects in a warrant or tax-list may be a good reason for not executing the warrant, but a collector having collected money without objection by the taxpayers is liable to account therefor.—*Orono v. Wedgwood*, 44 Me. 49.

Where the same person was collector of taxes for several successive years and failed to pay over or account for a portion of the taxes committed to him the first year, moneys collected and paid over by him arising from taxes of subsequent years cannot be appropriated to make up the deficiency of the first year, so as to affect the relative rights and duties of sureties on his several bonds.—*Porter v. Stanley*, 47 Me. 515.

Warrant for County and Town Taxes.— The warrant for collection of county or town taxes, shall be made by the assessors in the same tenor, with proper changes. *Ibid.*, S. 9.

The original assessment must be under the hands of the assessors, and that or a copy must be lodged in their office, if any, or in the town clerk's office before they issue their warrant of commitment to the collector.—*Norridge-wock v. Walker*, 71 Me. 183.

It is the duty of the collector and not of the treasurer of a town to pay the state tax.—*Wellington v. Lawrence*, 73 Me. 126.

A certificate to the treasurer by the assessors that they have issued to the collector a warrant in due form of law compels him to issue his warrant against a delinquent collector. Precisely the same obligation in this respect rests upon him as upon a state or county treasurer.—*Snow v. Winchell*, 74 Me. 410, 411.

CONSTABLES.

Election.— Constables are elected annually at the annual town meeting. When the town fails to elect they may be appointed by the selectmen. C. 4, SS. 12, 14.

Powers; Processes, May Serve; Bond.— A constable may serve, execute and return, upon any person in his town, or in an adjoining plantation, any writ of forcible entry and detainer, or any precept in a personal action, when the damage claimed does not exceed one hundred dollars, including those in which a town, plantation, parish, religious society, or school district, of which he is a member, is a party or interested; but before he serves any process, he shall give bond to the inhabitants of his town in the sum of five hundred dollars, with two sureties, approved by the municipal officers thereof, who shall indorse their approval on said bond in their own hands, for the faithful performance of the duties of his office, as to all processes by him served or executed; and for every process that he serves before giving such bond, he forfeits not less than twenty, nor more than fifty dollars, to the prosecutor. C. 82, S. 64.

In an action against a constable for the penalty for serving a justice's execution and taking fees before he had given bond, it is necessary to set forth the amount of the debt so that it may appear that the precept was within his authority to serve.—*Barter v. Martin*, 5 Me. 76.

A bond conditioned to "faithfully discharge his duty as constable" is a sufficient compliance with the statute.—*Quimby v. Adams*, 11 Me. 332.

The authority given by the statute to serve "writs and precepts" includes the service of executions recovered in such actions.—*Morrell v. Cook*, 31 Me. 120.

A justice's writ may be served by the constable of a town upon any person within the town, though such person may be an inhabitant of another town.—*Blanchard v. Day*, *Ibid.*, 496.

In serving such writs, constables may make valid attachments of real estate; and upon an execution issued on the judgment, a constable may lawfully levy on and set off real estate.—*Morrell v. Cook*, 35 Me. 207.

A process to obtain damages for flowing land by a mill-dam is a personal action, and when the damages demanded do not exceed one hundred dollars, may be served by a constable.—*Hall v. Decker*, 48 Me. 255.

If a constable's bond is good at the time a writ is served by him he cannot be made a trespasser by any subsequent avoidance of the bond through the unauthorized alteration of it by another.—*Fournier v. Cyr*, 64 Me. 33.

A constable is competent to serve the citation in a poor debtor's disclosure, although the amount due the creditor is more than a hundred dollars.—*Bliss v. Day*, 68 Me. 201.

The penalty imposed by the statute is not incurred if a constable serves a writ after the delivery of his bond though before it is approved.—*Stacy v. Graves*, 74 Me. 369.

Where a recovery for twenty dollars only was had in an action of debt against a constable for serving a civil process before giving his official bond, plaintiff is entitled to quarter costs only.—*Spaulding v. Yeaton*, 82 Me. 97.

Service Incomplete, How Completed.—If any officer, who has commenced the service or execution of a précept, becomes disqualified, it may be completed, with the same legal effect, by any other qualified officer; and if any officer aforesaid has made, in fact, any service, attachment or levy, by virtue of any process placed in his hands for service, and for any cause, has not made his return thereon, such return shall be made by a sheriff, any deputy, or other proper officer, under direction of a justice of the supreme judicial court, held in the county where said writ is returnable. *Ibid.*, S. 71.

It would seem that where a deputy sheriff, having attached goods upon a writ, and sold them on the execution issued upon the judgment recovered, indorsing his doings thereon, but having deceased without affixing his signature thereto, the sheriff might complete the return, and if so done it would be valid.—*Lovett v. Pike*, 41 Me. 340.

Aid, May Command.—Any officer, in the execution of the duties of his office in criminal cases, for the preservation of the peace, for apprehending or securing any person for the breach thereof, or in case of the escape or rescue of persons arrested on civil process, may require suitable aid therein. *Ibid.*, S. 70.

Arrest without Warrant.—Every constable shall arrest and detain persons found violating any law of the state, or any legal ordinance or by-law of a town, until a legal warrant can be obtained, and he shall be entitled to legal fees for such service; but if, in so doing, he acts wantonly or oppressively, or detains a person without a warrant longer than is necessary to procure it, he shall be liable to such person for the damages suffered thereby. C. 134, S. 4.

In a complaint against one for larceny before a justice of the peace, not triable before a magistrate, the offense should be stated in substance and clearly; but the same technical precision and accuracy is not required as in an indictment.—*State v. Corson*, 10 Me. 473.

It seems that by the common law an officer has authority to make an arrest upon reasonable ground of suspicion, without warrant, and if this suspicion vanishes, he may discharge the person arrested without bringing him before a magistrate. But he cannot lawfully detain him without warrant any longer than a reasonable time for bringing him before a magistrate.—*Burke v. Bell*, 36 Me. 317.

An officer, when making an arrest, is bound, on demand, to make known his authority.—*State v. Phinney*, 42 Me. 384.

The arrest of a workman without a warrant as a trespasser destroying city property was unjustifiable, inasmuch as the contract under which he was employed was considered as valid and subsisting by the city.—*Moore v. Durgin*, 68 Me. 148.

An officer who had taken a drum from a person whom he had arrested for beating it, in violation of a city ordinance, cannot detain it after the trial of the offender.—*Thatcher v. Weeks*, 79 Me. 548.

If a private individual procures the arrest of an innocent person for a misdemeanor by an officer without a warrant, he cannot justify by showing that

he acted in good faith without malice, and upon a belief in guilt founded upon reasonable grounds.— *Palmer v. Railroad*, 92 Me. 399.

If a person was found by a deputy sheriff violating any law of the state, it was his duty to arrest and detain him until a warrant could be obtained.— *State v. McLeod*, 97 Me. 81.

Attachments of Personal Property.— Different attachments in one or more counties may be made successively upon the same writ, and by different officers, before service of the summons upon the person whose property is attached, but none after such service. Personal property attached by a coroner may be again attached by a constable subject to the former attachment, by giving notice thereof to the coroner and furnishing him with a copy of the precept within a reasonable time. C. 83, S. 30.

Attorney, Cannot be, or draw Papers.— No officer shall appear before any court, or justice, or justice of the peace as attorney or adviser of any party in a suit, or draw any writ, plaint, declaration, citation, process, or plea for any other person; and all such acts done by either of them are void. C. 92, S. 74.

This section refers exclusively to civil proceedings, and does not prohibit sheriffs and deputies from drawing complaints under c. 62, Acts of 1872. *State v. McCann*, 67 Me. 374.

Auctioneers, Fines; Prosecution.— All fines imposed by this chapter may be recovered by indictment; and it is the special duty of constables to make immediate complaint for every offense against its provisions; half of all fines to be for the prosecutor and half for the town. C. 36, S. 9.

Bribery, Penalties.— Any executive officer (including constables) who accepts a bribe or beneficial thing, with corrupt intent, shall forfeit his office, be forever disqualified to hold any public office, trust or appointment under the state, and be punished by imprisonment for not more than ten years, or by fine not exceeding five thousand dollars. C. 123, SS. 5, 11.

Bristol, Constables Serve on Islands.— The constables of the town of Bristol may serve all precepts on Muscongus and Harbor islands, in the county of Lincoln, the same as in their own town, until said islands can legally elect constables. C. 82, S. 66.

Coroner's Warrants.— The constable to whom such warrant is directed and delivered shall forthwith execute it, at the time appointed, repair to the place where the dead body is, and make return of the warrant with his doings to said coroner or forfeit ten dollars. C. 140, S. 2.

County Commissioners, Execute Processes.— Constables shall execute all legal processes directed to them by county commissioners. C. 80, S. 9.

Cruelty to Animals; Enter Premises.— Any constable may enter any building or enclosure where he has reason to believe that any bird or

creature is kept for any unlawful purpose hereinbefore named. But nothing in this section allows any officer to enter a dwelling-house without warrant. C. 125, S. 39.

Constables shall investigate all cases of cruelty to animals coming to their knowledge, and cause offenders to be prosecuted in all cases in which the offense may appear to be sufficiently aggravated to require prosecution. *Ibid.*, S. 53.

Take Possession of Animals.—Any constable may take possession of any animals detained in violation of this chapter, unload the same, yard, shelter, feed, water and care for them, and have a lien thereon for such care, and is not liable for any damages for detention of the same. *Ibid.*, 125, S. 46.

Disturbers of Religious Meetings; Arrest.—Every constable present at any religious assembly disturbed by intruders or persons without, shall arrest or cause to be arrested every such offender and detain him until the close of the assembly or until he can be taken before a magistrate. *Ibid.*, S. 24.

Fines and Forfeitures, to Pay Over.—Constables, who by virtue of their office receive any fines, forfeitures, or bills of costs except debts and costs received upon executions in favor of the state, shall forthwith pay them to the treasurer of the county in which they accrued. C. 137, S. 3.

Fish and Game Wardens.—Constables are vested with the powers of inland fish and game wardens and their deputies, and shall receive for like services the same fees. C. 32, SS. 51, 52.

Gambling; Enforce Laws.—Constables are required promptly to enforce the laws against gambling rooms and to make complaint against any person or corporation in their town when there is probable cause to believe such person or corporation to be guilty of a violation of this section. C. 126, S. 1.

All wagers in this state are unlawful.—*Lewis v. Littlefield*, 15 Me. 233.

If the owner of a house took a lodger into an apartment under his control, and the lodger, without the owner's knowledge, allowed it to be resorted to for the purpose of gaming, the owner could not be considered as the keeper of a house resorted to for the purpose of gaming.—*State v. Currier*, 23 Me. 45.

Where persons went to a place to obtain beer and as an inducement to and a means of obtaining it, they resorted to a gambling device, and this was allowed by the keeper of the place, he would be guilty.—*State v. Eaton*, 85 Me. 237.

Health Officers, Assist.—Any member of a board of health, or any health officer, or other person employed by the local board of health, may, when obstructed in the performance of his duty, call to his assistance any constable, or other person he thinks fit, and every such constable or other person shall render assistance. C. 18, S. 49.

Ill-fame, Houses.— Constables are required promptly to enforce the laws against such houses and make complaint against any person in their town where there is probable cause to believe such person guilty of a violation of this section.

When a constable has reason to believe that a female has been inveigled or enticed into a house of ill-fame, he may complain to a competent magistrate who may issue his search warrant as in other cases, to enter such house by day or night, search for such female and bring her and the person in whose keeping she is found, before him, and may order her to be delivered to the complainant or to be discharged, as law and justice may require. C. 125, SS. 9, 11.

An indictment for keeping a house of ill-fame under the statute need not state that it is a common nuisance; the language of the statute is sufficient.—*State v. Stevens*, 40 Me. 561.

Upon a trial of an indictment for keeping a house of ill-fame, it is admissible to prove that there were girls in the house, and men and women were taken there at all hours of the night.—*State v. Garing*, 75 Me. 591.

Itinerant Vendors, Prosecute.— Constables shall prosecute for violations of the provisions of this chapter relating to itinerant vendors, in their towns, and report the same promptly to the assessors. C. 45, S. 9.

Jurors, Notices to.— A constable of a town shall notify the persons drawn as jurors four days at least before the sitting of the court, by reading the venire and the indorsement thereon to them, or leaving at their place of abode a written notice that they have been drawn, and of the time and place of the sitting of the court where they must attend; and shall make a seasonable return of the venire with his doings thereon. C. 108, S. 14

The return on the venire directed to the constable of the town of M. in the words "constable of the town," is sufficient.—*Fellows' Case*, 5 Me. 335.

One of the four days' notice for the draft of jurors may be Sunday.—*State v. Wheeler*, 64 Me. 533.

A venire issued after the expiration of the statutory limit, but in season for service by the proper officer in accordance with the provisions of the statute, is valid.—*State v. Smith*, 67 Me. 328.

Jurors; Venires, How Served.— The sheriff on receiving such venires shall immediately send them to the constables of the towns where directed and each constable on receipt thereof shall notify the voters of the town and especially the municipal officers and town clerk, by posting notices in two public and conspicuous places therein, and by delivering to at least two of the municipal officers and the town clerk written notice of said meeting, at least four days before such meeting, to assemble and be present at the draft of jurors called for, which shall be six days at least before the time when they are ordered to attend court. *Ibid.*, S. 9.

Liquor Cases, Prosecute.— Constables shall make complaint and prosecute all violations of this chapter and promptly enforce the laws against drinking houses.

If any officer in whose hands is placed any execution or final process issued in any civil or criminal suit instituted under this chapter unreasonably neglects or refuses to execute the same, an action may be commenced against him by any voter in the county and prosecuted to final judgment for the full amount of the judgment and interest on such execution. C. 29, S. 65.

Where an unlawful sale is alleged, and a delivery proved, proof of payment is not necessary.—Statute upheld.—*State v. Hurley*, 54 Me. 562.

The signature of the prosecuting attorney is not essential to the validity of an indictment.—*State v. Reed*, 67 Me. 127.

After verdict it is too late to complain of duplicity in an indictment, or complaint and warrant.—*Dolan v. Hurley*, 69 Me. 573.

A warrant for search and seizure served by a constable of the county legally authorized to serve such process, but to whom no direction has been given in the warrant is legally amendable at any time before final judgment. The omission of such direction is only matter of form.—*State v. Hall*, 78 Me. 37.

A complaint may be made on affirmation by one conscientiously scrupulous of taking an oath.—*State v. Welch*, 79 Me. 99.

Milk and Cream Tests; Prosecute Violations.—Every constable shall institute complaint against persons violating the provisions of sections twelve and fourteen of this chapter, one-half of the fines to go to the complainant and the balance to the state. C. 39, S. 15.

Misconduct, Remedy for.—Persons injured by the neglect or misdoings of a constable have the same remedy by preliminary action and action on his bond, as in case of a sheriff's bond. C. 82, S. 65.

Before an action can be maintained on a sheriff's or constable's official bond, the party seeking the remedy must obtain a judgment against the officer founded directly upon his official delinquency.—*Bailey v. Butterfield*, 14 Me. 112.

Actions of tort for misfeasance of sheriffs or constables do not survive as against their legal representatives.—*Gent v. Gray*, 29 Me. 462.

Mobs, Disperse.—It is the duty of constables to go among persons riotously or tumultuously assembled in any town, or as near to them as they can safely go, and in the name of the state command them immediately and peaceably to disperse; and, if they do not obey, the officers shall command the assistance of all persons present in arresting and securing the persons so unlawfully assembled. C. 124, S. 11.

Any two officers may require the aid of a sufficient number of persons in arms or otherwise, and may proceed in such manner as they judge expedient to suppress such riotous assembly and to arrest and secure the persons composing it. *Ibid.*, S. 12.

See "Selectmen."

Oleomargarine; Complaints.—Every constable shall institute complaint for violations of the law against imitations of butter and cheese, whenever he has reasonable cause for suspicion, and on the information of any who shall lay before him satisfactory evidence of the same. He shall take specimens of suspected butter or cheese and cause the same

to be analyzed or otherwise satisfactorily tested. The expenses and costs not exceeding twenty dollars may be taxed and allowed to the officer paying the same. C. 129, S. 7.

Probate Court, Attendance on.— Constables shall execute all legal processes directed to them by any judge of a probate court, who may when necessary require such officer, when not in attendance upon any other court, to attend during the sitting of the probate court, for which he shall be paid as in other courts for similar services. C. 65, S. 3.

Special Constables.— Selectmen shall appoint special constables to arrest and prosecute all tramps in their respective municipalities. C. 129, S. 35.

The governor is authorized to appoint special constables in each of the Indian tribes of the state. Spec. Laws 1883, c. 493.

Taxes; Duties in Collection.— A constable's duties in the collection of taxes are the same as those of a collector, and are set out under the title, "COLLECTOR OF TAXES."

Town Meeting, Preside.— In the absence of the town clerk and the selectmen, any constable may perform all the duties of clerk in receiving and counting the votes for moderator. C. 4, S. 16.

Warrant for; Penalty for not Serving.— The warrant for a town meeting may be directed to any constable of the town. *Ibid.*, S. 6.

For neglect to serve such warrant and make due return, he forfeits twenty-five dollars; for wilful neglect or refusal so to do, he forfeits not less than fifty nor more than two hundred dollars. C. 6, S. 81.

Town Officers; Summons; Return.— The list of officers chosen at a town meeting made by the town clerk, or two selectmen, is delivered to a constable with a warrant to him directed, and he is required within three days thereafter to summon each person named in the list to appear before the clerk within seven days and take the oath of office; at the end of ten days after receiving his warrant the constable shall return it, or forfeit six dollars. C. 4, S. 25.

Vessel, Attachment.— If a vessel has been attached by a sheriff or his deputy when a writ has been issued for a lien claim, such writ shall be served by such officer; if attached by a constable he shall give up to the officer having the lien writ, the possession and the precept upon which he attached it with his return of the facts thereon, and the attachment shall hold subject to the lien attachments. C. 93, S. 23.

Warrant for Election; Failure to Serve, Penalty.— If any person required to summon the voters of a town to assemble at any meeting for choice of any officers mentioned in section seventy-nine, neglects to do so or to make due return of the warrant therefor, he forfeits twenty-five

dollars to his town for each offense; but if he wilfully neglects or refuses, he forfeits not less than fifty, nor more than two hundred dollars, half to the state and half to the prosecutor, to be recovered by indictment. C. 6, S. 81.

Warrants; Precepts; Jurisdiction.— A warrant issued by a municipal or police court or a trial justice, for an offense committed in his county, or under the laws for the maintenance of bastard children, may be directed to and executed by a constable of any town therein; and if the accused has gone into another county before or after the warrant was issued, a sheriff or his deputy, coroner, or constable, having the warrant, may pursue and arrest him in any county, and carry him to the county where the act complained of was committed; and when such officer arrests a person to commit to the jail of his county, he may convey him by the most convenient and suitable route, although it pass through other counties. But, except for the purpose of retaking a prisoner whom he has arrested and who has escaped, or for the purpose of taking a person before such a court or trial justice, or for the purpose of executing a mittimus given to him by such court or trial justice, or for the purpose of pursuing a person who has gone into another town and for whose arrest such constable or marshal has a warrant, no constable of the several towns shall have any authority in criminal matters beyond the limits of the town in which he is elected or chosen. C. 82, S. 68.

A search and seizure warrant issued by the municipal court of Biddeford may be served in York county.— *Paquet v. Emery*, 87 Me. 215.

Writs; Copy Delivered; Money Paid; Penalty.— Every officer, plaintiff, or his attorney, having in his possession a writ on which an attachment has been made, shall make and deliver to the debtor or his attorney, if requested and the legal fee tendered, an attested copy thereof. And if he unreasonably refuses or neglects so to do for twenty-four hours, he forfeits five dollars, and five dollars additional for every subsequent twenty-four hours that he so refuses or neglects; to be recovered by the debtor to his own use, in an action of debt.

Any officer aforesaid who unreasonably neglects or refuses, on demand, to pay money received by him on execution to the person entitled to it, shall pay five times the lawful interest thereon so long as he so retains it. *Ibid.*, SS. 72, 73.

In order to charge a sheriff with thirty per cent. interest on moneys collected by him and not paid over upon demand, it is necessary that the demand be made by a person having authority to receive the money and execute a legal and valid discharge.— *Bulfinch v. Balch*, 8 Me. 133.

ENGINE MEN.

Towns may by ordinances or by-laws prescribe rules and regulations for the care and management of fire engines and other apparatus provided by them for the extinguishment of fires, and for the employment

and compensation of men, not exceeding sixty to each engine, and for the appointment of officers to govern them when on duty, and prescribe their style, rank, powers and duties.

Such enginemen are exempt from jury duty, unless their towns otherwise decide; continue in office during the pleasure of the municipal officers; meet annually to elect officers; establish such rules and regulations respecting their duty as are approved by the municipal officers, not repugnant to law.

Companies of enginemen are required to meet once every month and oftener if necessary to examine their engines and appendages, and by night or day without delay, under the direction of the firewards, use their best efforts to extinguish all fires in the town, or its immediate vicinity. C. 28, SS. 1, 3, 4.

FENCE VIEWERS.

Two or more fence viewers are chosen annually at the annual town meeting. In case of failure by the town to elect, they are appointed by the selectmen. C. 4, SS. 12, 14.

Their duties are chiefly judicial. When disputes arise between owners of contiguous lots or parcels of land in regard to a fence or fences, either party may invoke the assistance of the fence viewers to settle the controversy; and their judgments or assignments in the case, when recorded in the town clerk's office, are binding upon the parties. They may determine the line upon which a division fence shall be run and the share of expense to be borne by each of the parties required to build it.

The owners or occupants of a salt marsh enclosed by ditches for drainage and partition are required to maintain such ditches between their own and the adjoining enclosures while they continue to improve them, in proportion to the benefits accruing to each by such drainage, in the judgment of the fence viewers, who may determine the width and depth of the ditch, neither to exceed three feet, and the time to be allowed for making it, not to exceed sixty days. C. 26, SS. 39, 40.

The remedy given by the statute is cumulative, and does not affect the common-law remedy which an aggrieved party may have for damages sustained by neglect of the owner of fences to keep them in repair as the statute requires.—*Eames v. Patterson*, 8 Me. 81; *Gooch v. Stevenson*, 13 Me. 371.

Double the value of the fence built by order of the fence-viewers cannot be recovered unless the fence-viewers adjudge that the fence built by plaintiff is sufficient, and give notice thereof and of the value of the fence as ascertained by them, to the occupant so neglecting to repair or rebuild.—*Abbott v. Wood*, 22 Me. 541.

An adjudication by fence-viewers as to a fence built by one party is invalid unless previous notice to the other party was given of the time and place of their meeting that he might appear before them to present his views and protect his rights.—*Harris v. Sturdivant*, 29 Me. 366.

If upon the line between adjoining lots of land there has been no obligatory division, for the maintenance of a partition fence, the owner of each lot is bound to keep his cattle from crossing the line.—*Sturtevant v. Merrill*, 33 Me. 62.

The maintenance of a partition fence jointly by the owners of adjoining lands for however long a period does not create a prescriptive obligation upon either of them to maintain any separate and distinct part of it.—*Webber v. Closson*, 35 Me. 26.

In order to bar a recovery in an action *quare clausum fregit* it must be shown by defendant that there has been a division of the fence either by fence-viewers acting under the statute or by a valid and binding agreement between the parties owning the adjoining lots, or by prescription.—*Know v. Tucker*, 48 Me. 375.

Where there has been no statutory assignment of a partition fence between two adjoining lots of land owned by different parties, or between those from whom they derive title, each is bound to keep his cattle on his own land at his peril.—*Bradbury v. Gilford*, 53 Me. 99.

The assignment of a partition fence by fence-viewers, one of whom is a brother-in-law of one of the owners of the adjacent land, is void.—*Conant v. Norris*, 58 Me. 451.

The time limited by fence-viewers within which each adjacent owner shall build his part of the partition fence must be definitely fixed.—*James v. Tibbetts*, 60 Me. 557.

To make valid the division and impose upon a party the burden of building the part of the fence assigned to him, within the time fixed by the fence-viewers, it must appear that they delivered to such party their assignment in writing at the time it was made.—*Briggs v. Haynes*, 68 Me. 535.

To entitle one to recover double the value and expenses of building that portion of a fence assigned by fence-viewers to the party who neglects to build the same, it must appear that the party seeking to recover has built the whole of the part thus assigned.—*Cobb v. Corbitt*, 78 Me. 242.

A notice by fence-viewers to coterminous owners to meet on a certain day for a hearing, "unless very stormy, and, if very stormy, on the next pleasant day following except Sunday," is bad for uncertainty.—*Emery v. Maguire*, 87 Me. 116.

Fires; Prevention; Safeguards.—Towns have authority to provide suitable apparatus for the extinguishment of fires and to appoint officers and men to use and handle the same; but the duty of making and enforcing regulations for the prevention of fires devolves upon their municipal officers.

In the performance of this duty, they may make rules for the keeping and transportation in the town of gunpowder, petroleum, coal oils, burning fluids, naphtha and all other explosive and illuminating substances which they judge dangerous to the lives and safety of citizens, and may seize as forfeited such articles, kept or transported in violation of such rules. C. 28, S. 20.

In places where there is no organized fire department, they are required to inspect annually the safeguards against loss of life by fire in buildings used for public purposes, and order and direct such alterations and repairs as they may deem necessary. After notice to the owner or occupant of any building to make alterations or repairs, if the owner or occupant neglects for sixty days to make such alterations and repairs, he is subject to a fine, and the building or part of a building so occupied is deemed a common nuisance, and the municipal officers may forbid the use of such building for any public purpose until the order is complied with. *Ibid.*, SS. 40, 41.

Fire Safeguards; Certificates.— A list of the certificates given by town officers or engineers that proper safeguards for escape in case of fire have been provided, shall be returned by such officers to the clerk's office of their town monthly, and shall be recorded by the clerk in a suitable book. *Ibid.*, S. 42.

They are required, when upon inspection they find that proper safeguards against fire have been provided, to give the occupant or owner of such building a certificate under their hands of such fact, which is valid for one year from its date. They are also required to return to the town clerk's office monthly a list of such certificates issued by them. *Ibid.*, S. 42.

Investigation; Returns.— When property is destroyed or damaged by fire the municipal officers are required forthwith to notify the state insurance commissioner of the same, and to investigate and make a written return to the commissioner stating the cause, circumstances and origin of the fire and whether it was the result of carelessness or of design, also such other facts as are required by the commissioner.

Investigations may be private if so determined by the municipal officers. *Ibid.*, SS. 46, 47, 49.

FIRE WARDS.

Any town, at its annual meeting may elect as many fire wards as it deems necessary, and may by ordinances or by-laws, prescribe rules and regulations for the care and management of fire engines and other apparatus for the extinguishment of fires, for the employment and compensation of men, not exceeding sixty to each engine, and for the appointment of officers to govern them when on duty and to take charge of such apparatus, and may prescribe their style, rank, powers and duties.

The powers and duties of fire wards, engineers and enginemen are set forth in the statutes. C. 28, SS. 1-11.

FISH INSPECTORS.

In each town where pickled fish are cured or packed for exportation, the governor appoints from time to time one or more persons to be inspectors of fish who hold their office for five years unless sooner removed by the appointing power. C. 41, S. 5.

Every inspector is required to give bond for the faithful performance of his duties to the treasurer of the town, with sureties approved by the municipal officers, in a penal sum of not less than five hundred nor more than five thousand dollars. He makes annually a return to the office of the commissioner of sea and shore fisheries. *Ibid.*, SS. 6, 7.

FLOUR INSPECTORS.

See "Selectmen."

FREE PUBLIC LIBRARIES.

Established.—Any town, or village corporation located in a town where no free library exists, may establish a library within its limits for the use of its inhabitants, and may appropriate for the foundation and commencement of such library a sum not exceeding two dollars, and for its maintenance and increase annually, a sum not exceeding one dollar, for each ratable poll in the year next preceding.

Any town as such may receive, hold and manage devises, bequests or gifts for the establishment, increase or maintenance of a public library therein; and may accept by a vote of the legal voters thereof any land or land and buildings thereon to be used as a public library or art gallery, or both combined.

It is the duty of the municipal officers in any town and of the assessors in any village corporation where a free public library is established to certify, annually, on the first day of May, to the governor and council the amount of money appropriated by said town, or village corporation, during the preceding year for the purchase of books and documents for the use and benefit of such library and for the payment of the running expenses thereof; and the governor, with the advice and consent of the council, shall draw a warrant on the treasurer of state, for the purchase of books for such library, for a sum equal to ten per cent. of the amount expended by said town or village corporation as certified by its municipal officers or assessors.

Other provisions for state aid to town libraries are made by statute. C. 57, SS. 10–19.

The state allows devises, bequests and gifts to towns for the establishment or increase of public libraries without imposing any limitation whatever.—*Farrington v. Putnam*, 90 Me. 414.

HEALTH BOARD.

A local board of health, of three members, is appointed by the municipal officers, the first board to be renewed by the retirement of one member each year and the appointment of a new member each year thereafter to serve for three years. A well-educated physician may also be appointed to be the sanitary adviser and executive officer of the board.

The local board is charged with the duty of guarding the community against contagious and infectious diseases. They are required to report to the state board of health facts which relate to such diseases and all cases arising within their jurisdiction. It is their duty to investigate complaints concerning nuisances and to order the removal of the same. They are authorized to make, alter and amend orders and by-laws as they

think necessary and proper for the preservation of life and health and the successful operation of the health laws of the state. C. 18, SS. 24-54.

The municipal officers cannot fix the compensation of a physician employed by them after the services are rendered. Regulations must be made before in order to bind him.—*Clement v. Lewiston*, 97 Me. 95.

HEALTH OFFICER.

See "Selectmen."

INTOXICATING LIQUORS.

See "Selectmen."

JURORS.

See "Selectmen," "Town Clerk."

LEATHER INSPECTORS.

See "Selectmen."

LIBRARIES.

See "Free Public Libraries."

LIGHTER INSPECTORS.

See "Selectmen."

MILK INSPECTORS.

See "Selectmen."

MODERATOR.

Moderator.—The moderator is the first officer chosen at the annual town meeting and is sworn by a justice of the peace or the person presiding. It is his duty to preside over and to regulate the business of the meeting at which he is elected, and his service ends with the meeting itself.

No person may speak before leave is obtained from the moderator, and all shall be silent at his command, or forfeit to the town one dollar for every breach of such order. If any person persists in disorderly conduct after notice from the moderator, the latter may direct him to withdraw from the meeting; on refusal he forfeits three dollars to the town; and the moderator may have him removed by a constable and detained in confinement for three hours, unless the meeting sooner dissolve or adjourn.

He receives the ballots cast for the other town officers, declares the results of the votes, and administers the oath to the officers elect, in open meeting. C. 4, SS. 25, 29-31.

When the record of the meeting is silent, parol evidence that the moderator was sworn should be of a direct and positive character.—*Chapman v. Lim-erick*, 56 Me. 390; *Kellar v. Savage*, 17 Me. 444. See also *Greene v. Lunt*, 58 Me. 518.

Where an assessor was sworn before the moderator of the meeting at which he was elected, it was *held* that he was not legally qualified, as the moderator is not authorized to administer such oaths.—*Orneville v. Palmer*, 77 Me. 472.

MUNICIPAL OFFICERS.

See "Selectmen."

NUISANCES.

"See Selectmen."

OVERSEERS OF THE POOR.

Election.—Overseers of the poor, not exceeding seven in number, are chosen annually at the annual town meeting. They are elected by ballot, or, if the town fails to elect, may be appointed by the selectmen. C. 4, SS. 12, 14; C. 27, S. 11.

The law provides, however, that, in case a town so votes, it may elect a board of three overseers, one for one year, one for two years, and one for three years, and thereafter renew such board by choosing annually one member for the term of three years to fill the place of the retiring member. A town may also vote to elect a larger number of overseers and may determine how many shall be elected annually and the tenure of their office. P. L. 1905, C. 170.

When selectmen had signed a notice to another town of a claim for disbursements on account of an insane person, acting in the capacity of overseers, their action was sustained, on the ground that it not appearing that the town had chosen overseers, the presumption was it had not and that the selectmen acted in that capacity.—*Jay v. Carthage*, 48 Me. 357; *Garland v. Brewer*, 3 Me. 198.

Towns may choose any number of overseers of the poor not exceeding twelve, but if they deem the election of separate overseers unnecessary, the duties of those officers are to be discharged by the selectmen, of whom there must be three, five or seven. The election of only one overseer of the poor is valid.—*Lyman v. Kennebunkport*, 83 Me. 219.

The overseers of the poor are agents of the town in matters relating to the care and oversight of the poor, and as such have authority to take a contract for the town for the support of a pauper, without special instructions.—*Palmyra v. Nichols*, 91 Me. 21; *Rockland v. Farnsworth*, 93 Me. 184.

Duties in General.—Overseers shall have the care of persons chargeable to their town, and cause them to be relieved and employed at the expense of the town, and the town may direct their employment. C. 27, S. 12.

The action of one overseer, when ratified by the majority of the board, in furnishing relief to one falling into distress, is sufficient to interrupt the running of the time in which a settlement will be gained.—*Smithfield v. Waterville*, 64 Me. 415.

Where all or a majority of a board of overseers join in a notice to the town where a pauper's settlement is that he has fallen into distress and needs immediate relief, and that such relief has been furnished by their town, this affords competent evidence of ratification of the act of one of their number who had previously furnished supplies to the pauper, and, in the absence of contrary evidence, is sufficient proof of the fact.—*Linneus v. Sidney*, 70 Me. 115.

Adults Bound for One Year.—Overseers may set to work, or by deed bind to service upon reasonable terms, for a time not exceeding one year, persons having settlements in their town or having none in the state, married or unmarried, able-bodied, upwards of twenty-one years of age, having no apparent means of support and living idly; and all persons liable to be sent to the house of correction. *Ibid.*, S. 28.

Bastard; Mother's Rights.—No woman, whose accusation and examination on oath have been taken by a justice of the peace at her request shall make a settlement with the father, or give him any discharge to bar or affect such complaint, if objected to in writing by the overseers of the poor of the town interested in her support or the child's. C. 99, S. 8.

Neither the town where her settlement is nor the mother of a bastard has power to settle a prosecution under the bastardy act against the alleged father of the child without the consent of the other.—*Harmon v. Merrill*, 18 Me. 151.

The objection in writing to a settlement or discharge of a complaint in bastardy is seasonably made, if made at the trial of the respondent on the complaint.—*Eames v. Gray*, 61 Me. 406.

Contract for Support of Poor.—Persons chargeable shall not be set up and bid off at auction either for support or service; but towns at their annual meetings, under a warrant for the purpose, may contract for the support of their poor for a term not exceeding five years. C. 27, S. 14.

Correction, House, in Care of Overseers.—A town, at its own expense, may build and maintain a house of correction. Until such house is built, the almshouse or any part thereof may be used for that purpose.

Such house of correction shall be in charge of the overseers of the poor of the town, who shall have the inspection and government of the same, and may establish from time to time such rules and orders not repugnant to law, as they deem necessary for governing and punishing persons lawfully committed thereto. When an almshouse is used for a house of correction, the master thereof shall be master of the house of correction; but in other cases the overseers shall appoint a suitable master, removable at their pleasure, and may fix his compensation. The overseers from time to time shall examine into the prudential concerns and management of such house, and see that the master faithfully discharges his duty. C. 142, SS. 7, 8.

Prisoners' Earnings.— The masters shall within ten days after commitment of any person to such house of correction, give notice thereof to the overseers of the poor of the town where it is situated; and if the prisoner has actually received relief as a pauper, the overseers shall give the same notice to the overseers of the poor of the town of his legal settlement as is required in other cases, in which paupers become chargeable in places where they have no legal settlement. *Ibid.*, S. 13.

The master shall keep an exact account of the earnings of each prisoner and of the expenses incurred for commitment and maintenance, and present it on oath to the overseers of the poor of the town where such house is established, annually, and oftener if directed. *Ibid.*, S. 14.

In a suit to recover compensation for the support of a person lawfully confined in the county house of correction against the town where he had his settlement, it is necessary that the account should first be allowed by the county commissioners.— *Weymouth v. Gorham*, 22 Me. 389.

The certificate "examined and allowed" by the commissioners upon the account is sufficient in such a case.— *Gilman v. Portland*, 51 Me. 458.

Supplies for.— Every person committed to such house of correction shall be supplied with suitable food and clothing, and, if sick, with such medical attendance and care as the overseers order; and all expenses incurred for commitment and maintenance, exceeding the earnings of the person confined, shall be paid by the town where such prisoner has his legal settlement, or by his kindred. *Ibid.*, S. 9.

Imprisonment, Extension.— Notwithstanding the payment of costs and expenses, if the prisoner has actually received relief as a pauper, the overseers of the poor where the house is, or of the town to which he belongs, on complaint to the justice or court by whom he was committed, may procure an extension of the confinement, for not more than thirty days at a time, by the judge or justice; and such application may be renewed, if occasion requires it, on like complaint; and in all cases the prisoners shall be brought before the justice or court to answer to the complaint. *Ibid.*, S. 12.

Ill-fame, Houses.— A person convicted of keeping such a house shall not be allowed to keep boarders or lodgers without a license from the overseers of the poor of the town, who shall prosecute for such offense all whom they have good reason to suspect to be guilty. C. 125, S. 9.

In an indictment for keeping a house of ill-fame, it is not necessary to describe the street where it is situated.— *State v. Stevens*, 40 Me. 559.

Upon a trial for keeping a house of ill-fame it is admissible to prove that there were girls in the house, and that men and women were taken there at all hours of the night.— *State v. Garing*, 75 Me. 592.

Ill-fame, Houses; Search of.— Where an overseer of the poor has reason to believe that a female has been inveigled or enticed to a house of ill-fame, he may complain on oath to a competent magistrate, who may issue his search warrant as in other cases, to enter such house by

day or night, search for such female, and bring her and the person in whose keeping she is found, before him and may order her to be delivered to the complainant or to be discharged as law and justice require. *Ibid.*, S. 11.

Immigration Officers.—Whenever the governor has knowledge that, under the provisions of an act of Congress approved August three, eighteen hundred and eighty-two, officers are necessary in any town to take charge of the local affairs of immigration and to provide for the support and relief of immigrants falling into distress, he shall designate for such duty the board of overseers of the poor and their successors in such town, or any member or members of such board. C. 27, S. 13.

Indenture Bonds, Suits on.—The overseers, by a suit on the deed of indenture, may recover damages for breaches of its covenants. The amount so recovered, deducting reasonable charges, shall be placed in the treasury of the town, to be applied by the overseers for the benefit of the child during his term, or be paid to him at its expiration. The court, on trial for sufficient cause exhibited, may discharge the child. Such suit is not abated by the death of overseers or by the expiration of their term; but shall proceed in their names, or in the names of the survivors. *Ibid.*, S. 24.

Insane, Discharge.—When the overseers of the poor of a town, liable for the support of a patient at either hospital, are notified by mail by the superintendent, that he has recovered from his insanity, they shall cause him to be removed to their town; and if they neglect it for fifteen days, the superintendent shall cause it to be done at the expense of the town. C. 144, S. 27.

Joint Boards.—Towns may unite in the purchase of a farm, or in the erection of buildings to be used for the support of the poor. The overseers of such towns constitute a joint board of overseers of such farm and buildings. They may at a full meeting establish rules for the management thereof, appoint a superintendent, prescribe his powers and duties, and cause all the paupers of such towns to be supported there. They may receive and support there paupers of other towns. C. 27, SS. 15, 16.

Minors Bound out.—The minor children of parents chargeable, or of parents unable in the opinion of the overseers to maintain them, and minor children chargeable themselves, may, without their consent, be bound by the overseers, by deed of indenture, as apprentices or as servants to any citizen of the state, to continue until the males are twenty-one, and the females eighteen years of age or are married, unless sooner discharged by the death of their master. Provision shall be made in such deed for the instruction of such children in reading, writing, and arith-

metic; and for such further instruction and benefit within or at the end of the term, as the overseers think reasonable. *Ibid.*, C. 27, S. 22.

Cases describing the powers and duties of overseers in relation to the minor children of paupers.—*Leeds v. Freeport*, 10 Me. 358; *Milo v. Harmony*, 18 Me. 417; *Rockland v. Farnsworth*, 93 Me. 184.

Discharged on Master's Complaint.—A master may complain to the court in the county, where he resides, or where the overseers making the indenture resided, for gross misbehavior of the child, and the court, after notice to the child, and to the overseers of the town binding, may discharge the child. *Ibid.*, S. 27.

Treatment Inquired into.—The overseers shall inquire into the treatment of such children, and protect and defend them in the enjoyment of their rights in reference to their masters and others. They may complain to the supreme judicial court in the county, where their town is, or where the master resides, against such master for abuse, ill-treatment, or neglect of a child bound to him. Any child discharged, or whose master has died, may be bound anew for the remainder of the time. *Ibid.*, S. 23.

Pauper Relief.—Towns shall relieve persons having a settlement therein when, on account of poverty, they need relief. They may raise money therefor as for other town charges. *Ibid.*, S. 11.

Paupers, Foreign, Removed.—On complaint of overseers, that a pauper chargeable to their town has no settlement in the state, any judge of a municipal or police court, or trial justice, may, by his warrant directed to a person named therein, cause such pauper to be conveyed, at the expense of such town, beyond the limits of the state to the place where he belongs; but this section does not apply to the families of volunteers enlisted in the state, who may have been mustered into the service of the United States. *Ibid.*, S. 44.

Paupers, Intemperate, Complaint against.—When a person in their town, notoriously subject to habits of intemperance, is in need of relief, the overseers shall make complaint to a judge of a municipal or police court, or trial justice in the county, who shall issue a warrant and cause such person to be brought before him, and upon a hearing and proof of such habits, he shall order him to be committed to the house of correction, to be there supported by the town where he has a settlement, and if there is no such town, at the expense of the county, until discharged by the overseers of the town in which the house of correction is situated, or by two justices of the peace. *Ibid.*, S. 46.

Statutes empowering and directing overseers of the poor to commit to the workhouse, by a writing under their hands, all idle and dissolute persons, upheld as constitutional.—*Adeline G. Nott's Case*, 11 Me. 208.

Rules as to actions by a master of a house of correction against a town to recover the expenses incurred in support of a pauper therein.—*Gilman v. Portland*, 51 Me. 460.

A town may indemnify itself by a proper contract against the contingent liability of furnishing pauper supplies to one who has at the time a settlement in the town. The overseers of the poor may take such a contract for the town without special instructions.—*Palmyra v. Nichols*, 91 Me. 21.

Soldiers and Sailors not Paupers.—No soldier or sailor who served by enlistment in the army or navy of the United States, in the war of eighteen hundred and sixty-one, and who has received an honorable discharge from all enlistments in said service, whether in his own proper name or an assumed name, and who has or may become dependent upon any town, shall be considered a pauper, or be subject to disfranchisement for that cause; but the time during which said soldier or sailor is so dependent, shall not be included in the period of residence necessary to change his settlement; and overseers of the poor shall not have authority to remove to, or support in, the poor-house, any such dependent soldier or sailor or his family; but the town of his settlement shall support them at his own home in the town of his settlement or residence, or in such suitable place other than the poor house, as the overseers of the town of his settlement may deem right and proper. In case of a violation of this section the overseers of the poor shall be subject to a fine of twenty-five dollars. And for every day they allow them to remain in such poor-house, after reasonable notice, they shall be subject to a further fine of five dollars a day, to be recovered by complaint or indictment. *Ibid.*, S. 9.

The statute imposes no duty upon towns to render aid to needy persons whether soldiers or otherwise, but simply prohibits pauper disabilities to certain persons dependent upon towns and receiving aid on that account.—*Sebec v. Dover*, 71 Me. 574.

The statute exempting ex-soldiers and sailors from payment of peddlers' license fees upheld as constitutional.—*State v. Montgomery*, 92 Me. 443.

Pauper Settlement, How Acquired.—Settlements, subjecting towns to pay for the support of persons on account of their poverty or distress, are acquired as follows:

I. A married woman has the settlement of her husband, if he has any in the state; if he has not, her own settlement is not affected by her marriage. When, in a suit between towns involving the settlement of a pauper, it appears that a marriage was procured to change it by the agency or collusion of the officers of either town, or of any person having charge of such pauper under authority of either town, the settlement is not affected by such marriage. And no derivative settlement is acquired or changed by a marriage so procured, but the children of such marriage and their descendants have the settlement which they would have had if no such marriage had taken place. And the same rule applies in all controversies touching the settlement of paupers between the town

by whose officers a marriage is thus procured and any other town, whether the person whose marriage is thus procured is a pauper at the time of the marriage or becomes so afterwards. C. 27, S. 1, cl. I.

A pauper being the son of one who left the state intending not to return took the settlement of his mother whose father was settled in W. where she was born. Being a minor, he could not be emancipated, his father making claim to him.—*Pittston v. Wiscasset*, 4 Me. 293.

A married woman follows and has the settlement of her husband, if he has any in this state. If he has none her settlement is not lost nor suspended by her marriage.—*Eddington v. Brewer*, 41 Me. 462.

If the defendant town would avoid the effect of the apparently legal marriage they must prove the facts that will invalidate it.—*Harrison v. Lincoln*, 48 Me. 205.

A second marriage while the first subsists, being void, does not affect the settlement established by the first marriage.—*Howland v. Burlington*, 53 Me. 54.

The legislature has the right to prescribe what shall constitute a settlement, or, within reasonable limits, what shall be evidence of a settlement, and may alter the law upon the subject from time to time.—*Appleton v. Belfast*, 67 Me. 581, cites *Lewiston v. No. Yarmouth*, 5 Me. 66; *Goshen v. Richmond*, 4 Allen, 458.

The marriage of a minor daughter with her father's consent constitutes a mode of emancipation.—*Bucksport v. Rockland*, 56 Me. 22.

A settlement once gained continues until another is gained.—*Bowdoinham v. Phippsburg*, 63 Me. 497.

A wife cannot gain a pauper settlement separate from that of her husband. She may, however, change her residence so as to have another than that of her husband.—*Burlington v. Swanville*, 64 Me. 78.

In a declaration for pauper supplies furnished to a married woman, it is sufficient to aver that her settlement was in the defendant town and that at the time she was destitute and in need of relief.—*Fryeburg v. Brownfield*, 68 Me. 145.

A legitimate minor child, whose father has no settlement in this state at the time of his decease, follows the settlement of his mother, and is not emancipated by her second marriage.—*Hampden v. Troy*, 70 Me. 484.

A husband may gain a new settlement by five years continuous residence in any town without receiving pauper supplies, though his insane wife may be in the insane hospital and supported by the town.—*Bangor v. Wiscasset*, 71 Me. 535.

Where a fraudulent marriage is procured by the agency of town officers, the settlement of the pauper wife will not be changed, but children of such a marriage take the settlement of the father.—*Houlton v. Ludlow*, 73 Me. 583.

A married woman cannot acquire a pauper settlement in this state independently of her husband, in her own right.—*Winslow v. Pittsfield*, 95 Me. 53.

Declarations by town officers accompanying their official acts are admissible to show collusion to procure the marriage of a pauper in order to change her settlement and relieve the town of her support.—*Hudson v. Charleston*, 97 Me. 17.

Legitimate Children.— II. Legitimate children have the settlement of their father, if he has any in the state; if he has not, they have the settlement of their mother within it; but they do not have the settlement of either, acquired after they are of age and have capacity to acquire one. *Ibid.*, cl. II.

Illegitimate Children.— III. Children, legitimate or illegitimate, do not acquire a settlement by birth in the town where they are born. Illegitimate children have the settlement of their mother, at the time of their birth, but when the parents of such children born after March twenty-four, eighteen hundred and sixty-four, intermarry, they are deemed legitimate and have the settlement of the father. C. 27, S. 1, cl. III.

The annexation of part of a town to a town adjoining has the same effect as the incorporation of a new town as regards the legal settlement of those who actually dwell and have their homes upon the territory set off, at the time of the separation.— *Hollowell v. Bowdoinham*, 1 Me. 129; *New Portland v. Rumford*, 13 Me. 299; *Smithfield v. Belgrade*, 19 Me. 387; *Mt. Desert v. Seaville*, 20 Me. 341.

The wife of an alien having her lawful settlement in this state together with their children being paupers are to be supported by the town where that settlement is, but not the husband, he having no settlement.— *Sanford v. Hollis*, 2 Me. 194.

The incorporation of a town fixes the settlement of all persons having their legal home within the territory incorporated, whether they are actually resident thereon at the time of the incorporation or not.— *St. George v. Deer Isle*, 3 Me. 390.

Minor children follow the settlement which their mother acquires by a second marriage.— *Parsonsfeld v. Kennebunkport*, 4 Me. 50.

A child born of a woman who had a settlement and an alien, who afterwards deserted her, continued to have the settlement of his mother during his minority.— *Pittston v. Wiscasset*, *Ibid.* 293.

A woman deserted by her husband had two illegitimate children while residing in Saco. *Held*, that her husband's absence for sixteen years raised the presumption of his death, and she as a widow acquired a settlement in Saco which became the settlement of her children.— *Biddeford v. Saco*, 7 Me. 272.

A legitimate child, having its father's settlement at the time of his death, does not follow any new settlement gained afterward by the mother.— *Fairfield v. Canaan*, 7 Me. 90.

An illegitimate child cannot lose the settlement of its mother and acquire a new one until emancipated from her control as its natural guardian.— *Fayette v. Leeds*, 10 Me. 412.

A minor, illegitimate and *non compos mentis*, cannot gain a settlement in a town by residing therein at the time of its incorporation.— *Milo v. Kilmar-nock*, 11 Me. 455.

Posthumous children have a derivative settlement from their father, if he had one, and in this respect are in the same condition as those born in his lifetime.— *Farmington v. Jay*, 18 Me. 378.

Supplies furnished children living in another town, separate from their father on account of his poverty, are held to be furnished to him, and prevent his gaining a settlement in the town where he resides.— *Garland v. Dover*, 19 Me. 441.

Desertion by a minor child from his father's home does not constitute emancipation *per se*, so long as the father has not relinquished his right of control nor consented that the child may act independently.— *Bangor v. Readfield*, 32 Me. 60.

An act of 1842 annexed part of the town of Berlin to the town of Phillips, and annulled the incorporation of what remained; so far as the act affected the legal settlement of residents it is to be considered as a division of the town of Berlin and not merely an annexation of it.— *Livermore v. Phillips*, 35 Me. 184.

An arrival at the age of twenty-one does not emancipate a child who is *non compos mentis* and residing in his father's family; supplies furnished the

father for the support of such a child render him constructively a pauper.—*Tremont v. Mt. Desert*, 36 Me. 390.

The settlement of persons residing in territory set off from one town and not incorporated in another is not changed by such dismemberment.—*Weld v. Carthage*, 37 Me. 39.

Paupers having no legal settlement in a town, removing to another town, the responsibility for their support falls upon the town to which they remove.—*Holden v. Brewer*, 38 Me. 472.

The annexation of a small portion of the territory of one town to another adjoining is not such a division as is contemplated by section 1, pt. 4 of c. 32, R. S.—*Starks v. New Sharon*, 39 Me. 368.

A legitimate child, after he becomes twenty-one years of age, although voluntarily living with his father, no longer has a derivative settlement under him if the father acquires a new one; but retains the settlement of his birth until he gains a new one.—*Milo v. Gardner*, 41 Me. 551; *Hampden v. Brewer*, 24 Me. 281.

The division of a town fixes the settlement of persons absent at the time, in that part in which was their last dwelling-place. The incorporation of a new town from parts of other towns places in the new town the settlements of those who actually dwell and have their homes within its limits at the time of incorporation.—*Ripley v. Levant*, 42 Me. 308.

The actual home not temporary residence (as in the poor-house) determines the question of settlement.—*Brewer v. Eddington*, *Ibid.* 541.

It is competent for the legislature in annexing part of one town to another, to provide that persons having a legal settlement therein, but absent or residing elsewhere at the time, shall thereafter have their settlement in the town to which such part is annexed.—*Wilton v. New Vineyard*, 43 Me. 315.

A child who derives a settlement from his father, a pauper, does not become emancipated by being bound out to service till he is twenty-one years of age.—*Frankfort v. New Vineyard*, 48 Me. 566.

When before his death the parents of an ante-nuptial child intermarry and have other children and adopt them into their family, he is thereby legitimated, and he derives his pauper settlement according to the rules for legitimate children.—*Livermore v. Peru*, 55 Me. 469.

A naturalized citizen who gains a settlement in a town in Maine, then removes to New Brunswick, has a child born there and never returns to the state, the child takes the settlement of the father upon coming into the state.—*Oldtown v. Bangor*, 58 Me. 353.

An emancipated minor does not follow the settlement gained by the parent after the emancipation.—*Lowell v. Newport*, 66 Me. 78.

A legitimate minor child, whose father had no settlement in this state at the time of his decease, follows the settlement of his mother and is not emancipated by her second marriage.—*Hampden v. Troy*, 70 Me. 484.

Acts constituting emancipation of an infant without statutory adoption.—*West Gardner v. Manchester*, 72 Me. 509.

An emancipated minor cannot gain a settlement by having his home in any particular town for five successive years.—*No. Yarmouth v. Portland*, 73 Me. 108; *Exeter v. Stetson*, 89 Me. 531.

A *non compos* or insane person cannot acquire a pauper settlement in his own right.—*Strong v. Farmington*, 74 Me. 46.

Marriage procured by collusion of the officers of a town between the parents of an illegitimate child does not affect the settlement of the mother.—*Minot v. Bowdoin*, 75 Me. 205; *Houlton v. Ludlow*, 73 Me. 583, affirmed.

A *non compos* pauper is emancipated by the death of the father. The mother assuming the care and control, the settlement of the child is determined by the mother.—*Waterville v. Benton*, 85 Me. 137.

The father's settlement when a daughter who is *non compos mentis* becomes of age, becomes her settlement.—*Harrison v. Portland*, 86 Me. 309.

The pauper status of the children of a marriage between paupers is determined by the law in force at the time of the marriage; they take the

settlement of the father if he has one in this state.—*Gardiner v. Manchester*, 88 Me. 251.

A legitimate minor child whose deceased father had no pauper settlement in the state instantly acquires the new settlement of the mother gained by a subsequent marriage.—*St. George v. Rockland*, 89 Me. 43.

An inmate of the National Home cannot acquire a pauper settlement in the state, so long as his connection with the home continues.—*Winslow v. Pittsfield*, 95 Me. 57.

Division of Towns.—IV. Upon division of a town, a person having a settlement therein and being absent at the time, has his settlement in that town which includes his last dwelling-place in the town divided. When part of a town is set off and annexed to another, the settlement of a person absent at the time of such annexation is not affected thereby. When a new town, composed in part of one or more existing towns, is incorporated, persons settled in such existing town or towns, or who have begun to acquire a settlement therein, and whose homes were in such new town at the time of its incorporation, have the same rights incipient and absolute respecting settlement, as they would have had in the town where their homes formerly were. C. 27, S. 1, cl. IV.

A person having a settlement in one part of a town, before it was divided, removed to another part, and was residing there when the division was made. *Held*, that his family had their settlement in the latter place.—*Belgrade v. Dearborn*, 21 Me. 334.

The provisions of an act incorporating a town apportioning the expense of the paupers between the new and old town did not apply to persons born after the incorporation.—*Freeport v. Pownal*, 23 Me. 474.

A pauper having a settlement in the old town became fixed in the new town which embraced the territory on which he had resided.—*Winthrop v. Auburn*, 31 Me. 468.

An act incorporating the new town of Yarmouth, being a part of North Yarmouth, did not make chargeable upon the new town paupers who had been for more than five consecutive years previously supported by the old town.—*Yarmouth v. No. Yarmouth*, 44 Me. 352.

A new town is not bound by an agreement as to paupers made by the officers of two towns out of which it was formed, before its incorporation.—*Veazie v. Howland*, 47 Me. 131.

An act dividing a town and incorporating part of it into a new town does not affect the settlements of paupers afterwards becoming chargeable.—*Clinton v. Benton*, 49 Me. 550.

When part of a town is set off and incorporated into a new town, resident paupers, who had gained a settlement in the old town, subsequently have their settlement in the town in which they resided when the act of incorporation took effect, unless the act makes different provisions.—*Frankfort v. Winterport*, 51 Me. 445.

The settlement of a pauper who at the time of the annexation was residing on the territory of the defendant town and annexed to the plaintiff town and there supported by the former was not changed by the act of annexation.—*Monroe v. Frankfort*, 54 Me. 252.

The annexation of a plantation to a town by an act of the legislature, which is silent on the subject of pauper settlements, does not change the settlements of the inhabitants of the plantation which they have in other towns. A person residing in a plantation at the time of its annexation to a town, it not appearing that he had resided there five years, retains its prior pauper settlement.—*Woodstock v. Bethel*, 66 Me. 569.

A person who had lived in a town divided, but who died prior to the division, cannot be considered as "absent at the time" of the division, neither

can he be considered as having his "home in the new town" within the statute.—*Rockland v. Morrill*, 71 Me. 456.

When part of a town is set off from it and annexed to another, the settlement of a person absent at the time of such annexation is not affected by it.—*Manchester v. West Gardner*, 83 Me. 523; *Castine v. Winterport*, 56 Me. 319.

An emancipated minor cannot acquire a settlement in a town by five years' residence therein. Only "a person of age," not a minor, can thus acquire a settlement.—*Exeter v. Stetson*, 89 Me. 533.

Apprenticeship.—V. A minor who serves as an apprentice in a town for four years, and within one year thereafter sets up such trade therein, being then of age, has a settlement therein. *Ibid.*, cl. V.

Residence, Five Years.—VI. A person of age, having his home in a town for five successive years without receiving supplies as a pauper, directly or indirectly, has a settlement therein. *Ibid.*, cl. VI.

Residence for five successive years in a town gave a legal settlement there to a pauper notwithstanding the taking and holding of a bond by another town where she formerly resided for her support there.—*Standish v. Windham*, 10 Me. 79.

It is not necessary under statute 1821 that a person in distress should apply for relief as a pauper to defeat a legal settlement; it is enough that the supplies were furnished and received.—*Corinna v. Exeter*, 13 Me. 321.

A man died after living two years in a town. His wife continued to reside there for three years longer. Held, that she did not gain a settlement thereby. Upon the husband's death the wife was remitted to her husband's original settlement which was in St. George.—*Thomaston v. St. George*, 17 Me. 117.

A settlement is gained in a town by the residence therein of a person capable of gaining a settlement for the space of five years together without receiving supplies from the town as a pauper.—*Standish v. Gray*, 18 Me. 94.

Domicile depends on residence and intention, and when once fixed continues until a determination to reside elsewhere has been carried into effect.

If during the five years required to gain a settlement a person had carried his determination into effect even for a short period, it would prevent the settlement.—*Wayne v. Greene*, 21 Me. 357.

Payment by a town of the bill of a physician for services to a family is not such furnishing supplies as alone to fix the status of the family as paupers.—*Windham v. Portland*, 23 Me. 412.

A female twenty-one years of age and *non compos* may gain a settlement in a town by residing there for eight years without receiving help from the town.—*Augusta v. Turner*, 24 Me. 112.

If, while one is a member of another's family, pauper supplies are furnished to the family, it will be held that supplies are furnished to him, even though of full age and not subject to the control of any of the family.—*Corinth v. Lincoln*, 34 Me. 310.

Declarations of a person illustrating his acts are admissible to show intention to change one's domicile.—*Cornville v. Brighton*, 39 Me. 333.

Declarations of intention to change one's domicile, not carried out, are not admissible.—*Bangor v. Brewer*, 47 Me. 100.

In an action for supplies furnished to a pauper who is proved to have once had a settlement in defendant town, the burden of showing a subsequent settlement gained elsewhere is on the town.—*Starks v. New Portland*, *Ibid.* 183; *Deer Isle v. Winterport*, 87 Me. 41.

Insanity does not prevent such a continuous residence for five years as will operate to gain a settlement for the person. The insanity of a person does not prevent his continuous residence in a town for five years from operating to establish a settlement therein.—*Auburn v. Hebron*, 47 Me. 332.

Insanity and support in a hospital for the insane does not involve the dis-

abilities of pauperism for its victim.—*Jay v. Carthage*, 53 Me. 128; *Pittsfield v. Detroit*, *Ibid.* 442.

A special act only modifies the general law as to paupers chargeable upon a town at the time of its passage. All other questions of settlement are to be determined by the general law.—*Clinton v. Benton*, 49 Me. 554, cites *Boylston v. West Boylston*, 15 Mass. 261.

Under Stat. March 21, 1821, an emancipated minor, by five consecutive years' residence in a town, could not there fix his settlement, for no person under twenty-one years of age could thus gain a settlement.—*Veazie v. Machias*, 49 Me. 105.

A domicile once acquired continues until a new one is gained.—*Littlefield v. Brooks*, 50 Me. 475.

Persons *non compos mentis* may acquire a settlement in their own right by a five years' residence.—*Corinth v. Bradley*, 51 Me. 540.

One *non compos mentis* from birth, who continues dependent upon his father for support after becoming of age, cannot acquire a legal settlement for himself.—*Monroe v. Jackson*, 55 Me. 55.

To establish a settlement, it must be shown that the pauper had his home for five successive years on the actual territory within the legal limits of the town.—*Ellsworth v. Gouldsboro*, *Ibid.* 94.

One who leaves his place of abode with everything he has, without any intention of returning, has, under the pauper statute, abandoned it whether he has acquired another or not.—*N. Yarmouth v. W. Gardiner*, 58 Me. 207.

If, while absent, one forms an intention to abandon his residence in a place, his residence as effectually ceases as if he had intended not to return when he left it.—*Hampden v. Levant*, 59 Me. 557.

Relief furnished where there was no existing distress to be relieved, in order to prevent a pauper from gaining a settlement, would not affect the settlement of the person so relieved.—*Powcroft v. Corinth*, 61 Me. 559.

Bodily presence, coupled with intention to enable a single woman to establish a home, the continuance of which for five years, will give her a settlement.—*Fayette v. Livermore*, 62 Me. 229.

Abandonment of a husband by a wife will not affect the husband's settlement; neither will his desertion of her affect it. Abandonment by him of the home may affect it. The wife may acquire a separate domicile apart from her husband.—*Burlington v. Swanville*, 64 Me. 78.

One must live five consecutive years in a town after attaining his majority, in order to acquire a settlement. *N. Yarmouth v. Portland*, 73 Me. 108.

Imprisonment in a state prison for five years does not of itself interrupt continuity of residence of the prisoner in the town where he has his home and was supporting his family when imprisoned. *Topsham v. Lewiston*, 74 Me. 236.

The fact of voting is not conclusive of residence.—*East Livermore v. Farmington*, 74 Me. 155.

A person *non compos mentis*, if of age, can acquire a pauper settlement in a town under clause VI.—*Waterville v. Benton*, 85 Me. 136, and cases cited.

Voluntary contributions of private charity do not constitute pauper supplies within the meaning of the statute. The supplies must be received from the town directly or indirectly.—*Orland v. Penobscot*, 97 Me. 31.

Residence March 21, 1821.—VII. A person having his home in a town, March twenty-one, eighteen hundred and twenty-one, without having received supplies as a pauper within one year before that date, acquired a settlement therein. C. 27, S. 1, cl. VII.

Where a man changed his domicile by abandoning his residence in one town and taking his family to another, with the intention of remaining there indefinitely, and was there on March 21, 1821, his home was there, and he thereby gained a settlement, though his right to continue in the house depended on the will of another.—*Wilton v. Falmouth*, 15 Me. 479.

Under the act of March 21, 1821, an emancipated minor could gain a settlement by having his home in a town.—*Milo v. Harmony*, 18 Me. 417, cites *Lubec v. Eastport*, 3 Greenl. 220.

Incorporation of Towns.—VIII. A person having his home in an unincorporated place for five years without receiving supplies as a pauper, and having continued his home there until the time of its incorporation, acquires a settlement therein. Those having homes in such places for less than five years, before incorporation, and continuing to have them there afterwards until five years are completed, acquire settlements therein. *Ibid.*, cl. VIII.

Settlements Remain.—Settlements acquired under existing laws, remain until new ones are acquired. Former settlements are defeated by the acquisition of new ones. Whenever a person having a pauper settlement in a town, has lived or shall live, for five years in any unincorporated place or places in the state, he and those who derive their settlement from him lose their settlement in such town, and whenever a person having a pauper settlement in any town in the state shall after April twenty-nine, eighteen hundred and ninety-three, live for five consecutive years beyond the limits of the state without receiving pauper supplies from any source within the state, he and those who derive their settlement from him lose their settlement in such town. *Ibid.*, S. 3.

Former settlements are defeated by gaining new ones. A repeal of an act incorporating a town does not revive a former settlement in the unincorporated place.—*Monson v. Fairfield*, 55 Me. 117.

The child of a naturalized citizen who has acquired a settlement in a town in this state, and removed to New Brunswick, upon coming into the state takes the settlement of his father.—*Oldtown v. Bangor*, 58 Me. 353.

A person having a pauper settlement in the defendant town removed to and lived more than five successive years in an unincorporated place. *Held*, that he and those deriving from him thereby lost their settlement in that town.—*Rangely v. Bowdoin*, 77 Me. 592.

Imprisonment in another state and the marriage of his wife to another man did not destroy the residence and settlement of a man in Bangor, established before.—*Bangor v. Frankfort*, 85 Me. 128.

A married woman lost her settlement derived from her husband by his removal and living five years beyond the limits of the state.—*Portland v. Auburn*, 96 Me. 502.

Bridge Tenders, Etc.—No person acquires a pauper settlement in a town by reason of his residing in said town as tender of a draw-bridge, or as toll-keeper of a bridge owned by another town, and living in a toll-house owned by such other town. *Ibid.*, S. 5.

Revision of Laws.—Persons who have begun to acquire settlements under existing laws, are not affected by a repeal of them and a re-enactment of their provisions in substance. *Ibid.*, S. 10.

Pauper Supplies, How Constituted.—To constitute pauper supplies, they must be applied for in case of adult persons of sound mind, by

such persons themselves, or by some person by them duly authorized; or such supplies must be received by such persons, or by some person authorized by them, with a full knowledge that they are such supplies; and all care, whether medical or otherwise, furnished to said persons is subject to the same rule. C. 27, S. 2.

Needed supplies furnished to a minor child not emancipated or abandoned, when furnished with the knowledge of the father and by reason of his failure to furnish necessary support to the child, will be deemed supplies furnished indirectly to the father, and will interrupt the gaining of a settlement by him.—*Eastport v. Lube*, 64 Me. 244.

The wife is competent to make application for supplies for herself and children without previous authority from the husband or subsequent ratification by him.—*Sebec v. Foxcroft*, 67 Me. 491.

Acts of kindness or of charity, or aid furnished as a gift or loan do not constitute supplies within the pauper act. *Hampden v. Bangor*, 68 Me. 368.

Where one was arrested for crime and while in the lock-up attempted suicide, and medical attendance was furnished to him, it was held that the supplies furnished were not supplies to a pauper, but to a criminal, being so regarded by him.—*Bucksport v. Cushing*, 69 Me. 224.

Facts showing knowledge of the persons receiving supplies that they came from the town.—*Linneus v. Sidney*, 70 Me. 114.

Payment of rent due by one who is in destitute circumstances by overseers of the poor is not furnishing pauper supplies.—*Vinalhaven v. Lincolnville*, 78 Me. 423.

The belief of the pauper that the supplies were furnished by the town in response to his application is not sufficient. It is the fact, and not his belief, which constitutes them pauper supplies.—*Orland v. Penobscot*, 97 Me. 32.

Idle Persons Bound.— Overseers may set to work, or by deed bind to service upon reasonable terms, for a time not exceeding one year, persons having settlements in their towns or having none in the state, married or unmarried, able-bodied, upwards of twenty-one years of age, having no apparent means of support and living idly; and all persons liable to be sent to the house of correction. *Ibid.*, S. 28.

Person Bound, Complaint.— A person bound for one year may complain to the court in the county where he or the overseers reside, and the court after notice to the overseers and master, may, upon a hearing, dismiss such complaint, or discharge him from the master and overseers, and award costs to either party or against the town at discretion. *Ibid.*, S. 29.

Persons Removed Returning.— A person removed to the place of his settlement, who voluntarily returns to the town from which he was removed, without the consent of the overseers, may be sent to the house of correction or jail as a vagabond. *Ibid.*, S. 43.

Property of Deceased Pauper.— Upon the death of a pauper then chargeable, the overseers may take into their custody all his personal property, and if no administration on his estate is taken within thirty days, they may sell so much thereof, as is necessary to repay the ex-

penses incurred. They have the same remedy to recover any property of such pauper, not delivered to them, as his administrator would have. *Ibid.*, S. 48.

Overseers of the poor have no authority to intermeddle with the property of persons who receive relief from their towns as paupers.—*Furbish v. Hall*, 8 Me. 318.

Prosecute or Defend a Town.— For all purposes provided for in this chapter, its overseers, or any person appointed by them in writing, may prosecute and defend a town. *Ibid.*, S. 49.

Runaway Minors Returned to Masters.— When a child so bound departs from service without leave, his master or a person in his behalf may complain on oath to a trial justice in the county, where he resides, or where the child is found, who shall issue a warrant and cause such child to be brought before him, and when the complaint is supported, he shall order the child to be returned to his master, though he resides in another county, or commit him to a jail or house of correction, to remain not exceeding twenty days, unless sooner discharged by his master. *Ibid.*, S. 26.

Strangers, Relief.— Overseers shall relieve persons destitute, found in their towns and having no settlement therein, and in case of death, decently bury them, or dispose of their bodies according to section three of chapter seventeen; the expenses whereof and of their removal incurred within three months before notice given to the town chargeable, may be recovered of the town liable, by the town incurring them, in an action commenced within two years after the cause of action accrued, and not otherwise; and may be recovered of their kindred in the manner before provided in this chapter. *Ibid.*, S. 37.

The town in which a pauper has his settlement is not liable to an action by the town relieving him until the expiration of two months after notice given pursuant to the statute.—*Belmont v. Pittston*, 3 Me. 453.

When a man has a wife and children under his immediate care and protection, and with his family is unable to support himself and them, he is to be considered a pauper.—*Poland v. Wilton*, 15 Me. 363.

Where one town furnishes supplies to a pauper having his legal settlement in another, the cause of action accrues at the time of the delivery of notice that the expenses have been thus incurred, and the statute of limitations of two years, within which the action must be begun, begins to run at that time.—*Camden v. Lincolnville*, 16 Me. 384.

An action by a town, wherein a pauper is found in need of immediate relief, may be maintained, to recover the expenses incurred against the town in which his settlement may be, as soon as the town notified has returned an answer denying that the settlement of the pauper was in their town and their liability for the expenses, although commenced within two months after notice given.—*Sanford v. Lebanon*, 26 Me. 461.

When persons having settlements in other towns fall into distress and stand in need of immediate relief, the overseers of the poor need not inquire or consider whether such persons have or have not property for any other purpose than to determine that fact.—*Brewer v. East Machias*, 27 Me. 493.

If supplies are furnished by the overseers of the poor of a town to a person

alleged to be a pauper having a settlement in another town, their opinion or adjudication that the supplies furnished were necessary, although made in good faith, is not conclusive of that fact in a suit to recover the value of such supplies.—*Thomaston v. Warren*, 28 Me. 289.

It is within the scope of the official powers of overseers of the poor to adjudge and pay claims against their town, made for supporting any of their paupers by another town.—*Harswell v. Phippsburg*, 29 Me. 313.

Notice to the defendant town must be signed in the name of the overseers of the poor, or of some one of them in their behalf.—*Cooper v. Alexander*, 33 Me. 453.

A town having relieved a person who has no settlement in the state is under no further obligation when that person removes to another town and there falls into distress.—*Holden v. Brewer*, 38 Me. 476.

An action to recover for supplies furnished a pauper may be brought within two years after two months have expired from the time of giving notice, where no answer is returned, and where an answer is returned denying liability, within two years from the return of the answer.—*Robbinson v. Lisbon*, 40 Me. 287.

A. and his wife and children, while residing in Bangor, were furnished supplies as paupers; the husband having no settlement in the state, the wife and children having a settlement in the town of Hampden. Held, that the latter town was liable for such part of the supplies as were used by the wife and children, but not for such as were used by the husband.—*Bangor v. Hampden*, 41 Me. 484.

If a town chargeable makes payment for supplies furnished a pauper upon due notice, a new notice is necessary to charge it for further supplies furnished to the pauper.—*Bangor v. Fairfield*, 46 Me. 558.

Where a notice is signed as selectmen and it does not appear that other persons were chosen as overseers of the poor, it will be presumed that the selectmen acted in that capacity, and the notice held sufficient.—*Jay v. Carthage*, 48 Me. 353.

Overseers are to relieve persons destitute found in their towns and having no settlement therein. The relief must be reasonable and proper. The statute does not prescribe the manner in which this relief shall be administered. This must be left to the sound discretion of the overseers.—*Clinton v. Benton*, 49 Me. 550.

Cities and towns furnishing supplies to the families of soldiers under the act of 1861, c. 63, have no action against the city or town where the soldier whose family has received supplies has his settlement.—*Veazie v. China*, 50 Me. 518.

The forcible removal of the family of a volunteer soldier to the town of their legal settlement, by the overseers of the poor of the town, would be an unauthorized act for which they would be answerable in damages.—*Ames v. Smith*, 51 Me. 603.

One notice is sufficient where the supplies are furnished occasionally, the same as if furnished continuously.—*Veazie v. Howland*, 53 Me. 38.

The cause of action for the support of an insane pauper, who is not an inhabitant of the town, originates when the expenses incurred at the insane hospital by a town are paid to the hospital, and the statute of limitations then begins to run.—*West Gardiner v. Hartland*, 62 Me. 247.

Ratification by a majority of the board of overseers makes valid the action of one of their number in furnishing supplies to one falling into distress.—*Smithfield v. Waterville*, 64 Me. 415.

For every new action for pauper supplies furnished by a town, a new preliminary notice must be given.—*E. Machias v. Bradley*, 67 Me. 533.

Statute 1875, c. 21, construed, *Sebec v. Dover*, 71 Me. 576.

In an action for pauper supplies, the ability of kindred to contribute to a pauper's support cannot be set up in defense by the town or city where the pauper has his settlement. Actual payment for the supplies furnished is not essential to create a cause of action for them.—*Auburn v. Lewiston*, 85 Me. 282.

Strangers, Notice of Removal.—Overseers shall send a written notice, signed by one or more of them, stating the facts respecting a person chargeable in their town, to the overseers of the town where his settlement is alleged to be, requesting them to remove him, which they may do by a written order directed to a person named therein, who is authorized to execute it. C. 27, *Ibid.*, S. 39.

Where a town in which a pauper had his settlement, being duly notified, paid the expense of his support and removed him; but before he reached the place of his settlement he returned to the town whence he had been removed and where he again became chargeable, it was held that the town where he had his settlement was entitled to a new notice before becoming liable for after expenses.—*Greene v. Taunton*, 1 Me. 228.

A notice should state the names of the persons or otherwise so describe them so that the overseers may certainly know whom to remove. "S. and his family" or "S. and several of his children," held insufficient.—*Bangor v. Deer Isle*, *Ibid.* 329.

A notice signed by the chairman of the selectmen *eo nomine* is sufficient, and it will be presumed that the town did not choose overseers of the poor, unless the contrary appears.—*Garland v. Brewer*, 3 Me. 197.

The notice required by statute may properly be sent or delivered to such persons or any one of them as appear by the records of the town to be notified to be overseers of the poor for the current year.—*Gorham v. Calais*, 4 Me. 475.

A notice under the statute is sufficient, if it be signed by one overseer of the poor in behalf of all.—*Dover v. Deer Isle*, 15 Me. 169.

The arrival of a notice at the post-office in the town to which it was directed is made by Stat. 1835, c. 149, equivalent to a delivery to the overseers, and the two months within which an answer is to be returned begins from the date of such arrival.—*Augusta v. Vienna*, 21 Me. 298.

A notice of a certain tenor held to be sufficient.—*Kennebunkport v. Burton*, 26 Me. 61.

A notice sufficient as to a wife will not be held invalid because it is coupled with a defective notice as to others.—*Sanford v. Lebanon*, 31 Me. 124.

When no answer to a notice is returned by the defendant town, the cause of action for supplies furnished accrues at the expiration of two months from the time notice is given.—*Cutler v. Maker*, 41 Me. 594, overruled.

The giving of a new notice is not a waiver of any rights acquired under the first notice given.—*New Vineyard v. Phillips*, 45 Me. 405.

The deposit in the post-office of a notice to a town that one of its inhabitants has become chargeable as a pauper is evidence only of delivery, not of the contents of the notice.—*Belfast v. Washington*, 46 Me. 460.

After payment for all supplies furnished up to the time of the notice, a new notice is necessary to charge the town for further supplies to the pauper.—*Bangor v. Fairfield*, *Ibid.* 560.

Where no payment has been made one notice is sufficient.—*Jay v. Carthage*, 48 Me. 356.

Where a pauper has died, the failure in the notice to request a removal does not invalidate it, nor does the absence of a date, it being proved that the notice arrived at the post-office in the town chargeable before the expiration of the three months from the time the supplies were furnished and the funeral expenses paid.—*Ellsworth v. Houlton*, 48 Me. 416.

A town cannot give a notice that will charge another town for pauper supplies furnished subsequent to such notice, unless actual pauper supplies had been furnished prior thereto.—*Verona v. Penobscot*, 56 Me. 11.

A written notice signed by the city clerk "for the overseers of the poor" is not a sufficient compliance with the statute, although done under the instructions of the overseers.—*Belfast v. Lee*, 59 Me. 293.

A notice containing a misstatement of material facts is not a compliance with the statute.—*Glenburn v. Oldtown*, 63 Me. 582.

Answer Returned.—Overseers receiving such notice shall within two months, if the pauper is not removed, return a written answer signed by one or more of them, stating their objections to his removal; and if they fail to do so, the overseers requesting his removal may cause him to be removed to that town in the manner provided in section thirty-nine; and the overseers of the town to which he is sent shall receive him and provide for his support; and their town is estopped to deny his settlement therein, in an action brought to recover for the expenses incurred for his previous support and for his removal. *Ibid.*, C. 27, S. 40.

The town in which the pauper has a settlement is not liable to an action by the town relieving him until the expiration of two months after notice.—*Belmont v. Pittston*, 3 Me. 454.

Supplies furnished by order of one of a board of overseers, acting under a parol agreement with the rest of the board as to the manner of executing their office, are supplies furnished "by some town" within the statute (1821, C. 122, S. 3).—*Windsor v. China*, 4 Me. 298.

The provision of the statute that failure to answer the notice bars the defendant town from contesting the question of settlement does not apply to cases where the settlement can be shown to be in the town giving the notice.—*Turner v. Brunswick*, 5 Me. 31.

The answer to a notice will not furnish a basis of defense except as to those persons named therein.—*Palmyra v. Prospect*, 30 Me. 213.

The suit must be commenced within two years after an answer denying liability is returned, or, if no answer is returned, within two years after the expiration of the two months from the time of giving notice, which is the law allows the defendant town to return an answer.—*Veazie v. Howland*, 53 Me. 43.

A town having notice that A. B. and his wife and children have become chargeable as paupers is not estopped to deny the settlement of the alleged wife and children, unless it appeared that they were the wife and children of A. B.—*Holden v. Glenburn*, 63 Me. 582.

The failure of a town to return an answer to the notice estops it to deny that the pauper had a settlement within it, notwithstanding the pauper has not been removed to the town; such a removal or a reasonable excuse for not making it is not essential to create the estoppel provided by the statute.—*Bangor v. Madawaska*, 72 Me. 205.

It is immaterial to the issue how the pauper came into the town. If supplies have been furnished, the town furnishing them, after following the requirements of the law, may recover of the town in which the pauper relieved has his settlement compensation for the supplies thus furnished.—*Minot v. Bowdoin*, 75 Me. 209.

Notice; Answer.—When a written notice or answer provided for in this chapter is sent by mail, postage paid, and it arrives at the post office where the overseers to whom it is directed reside, it is sufficient. *Ibid.*, S. 41.

A notice properly addressed and deposited in the post-office on a certain day, in the absence of all other evidence, was received in due course of mail.—*Augusta v. Vienna*, 21 Me. 303.

The law does not require that the town sending the notice shall pay the postage of the letter.—*Athens v. Brownfield*, *Ibid.* 445.

Absence of date in the notice is not material when the date of mailing or receiving is established.—*Ellsworth v. Houlton*, 48 Me. 422.

Towns Liable to Individuals Relieving Poor.—Towns shall pay expenses necessarily incurred for the relief of paupers by an inhabitant

not liable for their support, after notice and request to the overseers, until provision is made for them. *Ibid.*, S. 45.

No person except the one giving notice to the overseers can recover of the town expenses for supplies issued to a pauper. A new notice is required where a person furnishes supplies after the overseers have stopped furnishing relief under the first notice.—*Warren v. Isleborough*, 20 Me. 442.

If the overseers of the poor of a town, after notice that immediate relief is needed, neglect to furnish the same, any inhabitant, not liable by law to do it, may furnish such relief and recover for the same in an action against the town.—*Brown v. Orland*, 36 Me. 378.

In a case where the overseers contracted to pay the father of an insane person for his maintenance, the liability by contract supersedes that created by statute, and after the contract expires a new notice and request must come before a new liability is incurred.—*Gross v. Jay*, 37 Me. 11.

Where a physician claimed compensation for services rendered to a destitute person, and offered proof that one of the overseers gave his sanction, it was held that the action must fail, unless the claimant could show that a majority of the board of overseers of the town had ratified the act of the individual overseer.—*Boothby v. Troy*, 48 Me. 561.

Towns are bound to furnish actual relief to persons in need thereof; and when the town fails to do so any inhabitant (not liable for the pauper's support) may provide the necessary relief and recover the expense thereof against the town, notwithstanding the overseers had contracted to have the relief furnished by one who failed to do it.—*Perley v. Oldtown*, 49 Me. 31.

Where plaintiff was grandfather of a pauper minor and sued the town for expenses incurred in the care of his grandchild, it was held that he could recover the excess only above what he was able to pay towards the pauper's support.—*Hall v. Clinton*, 53 Me. 61.

A notice and request to one member of a board of overseers is a sufficient compliance with the requirements of the statute.—*Newbit v. Appleton*, 63 Me. 491.

A person living in an unincorporated place who furnishes supplies to a person falling into distress in that place cannot recover therefor from the oldest incorporated town adjoining, unless the pauper has at the time his legal settlement in such town.—*Kennedy v. Weston*, 65 Me. 597.

A town held liable to one who kept a child of ten years after notifying the overseers of the poor, it being the duty of the overseers to remove the child from plaintiff's house after notice.—*Knight v. Ft. Fairchild*, 70 Me. 500.

Where, by an ordinance of a city, the board of overseers were empowered to appoint a clerk or agent to act for them, that a "notice and request" given to him was sufficient.—*Sullivan v. Lewiston*, 93 Me. 71.

In the absence of a contract for that purpose, a town cannot be held liable to the inhabitant of another town for relief furnished to a pauper having a settlement in the first.—*Conley v. Woodville*, 97 Me. 240.

Towns May Recover of Paupers.—A town, which has incurred expense for the support of a pauper, whether he has a settlement in that town or not, may recover it of him, his executors, or administrators, in an action of assumpsit. *Ibid.*, S. 47.

A town which has paid another for the expense of support of the wife of one having a settlement in the first may recover of the husband the expense so paid by it.—*Alna v. Plummer*, 4 Me. 258.

The right of a town to recover of a person the expense incurred by it for his support is barred unless an action is commenced within six years from the time the right of action accrued.—*Kennebunkport v. Smith*, 22 Me. 445.

The right of action of one town against another for the support of a pauper accrues at the time of the delivery of the notice that the expenses have been

incurred, and the statute of limitations of two years then begins to run.—*Cutler v. Maker*, 41 Me. 600.

Coverture is no bar to an action by a town to recover for pauper supplies furnished by a town to a wife who has been deserted by her husband.—*Peru v. Poland*, 66 Me. 217.

Towns Reimbursed by the State.—Whenever a person having a pauper settlement in a town, loses such settlement by virtue of the provisions of section three, relief shall be furnished, and towns furnishing such relief shall be reimbursed by the state as provided in section thirty of this chapter, in case of paupers having no legal settlement in the state. *Ibid.*, S. 4.

Whenever persons who have no legal settlement within the state, and needing immediate relief are found in any town, or in unincorporated places and are brought into an adjoining town obliged by law to care for and furnish relief to such persons, and relief is so furnished, the state shall reimburse said town for such relief so furnished in the same manner and under the same restrictions as provided in section thirty, although the overseers of the poor of said town have no permit in writing from the governor and council to remove the same into their town. *Ibid.*, S. 33.

Relief to Aliens.—The Revised Statutes shall not be construed to make any town liable for relief furnished to an alien or his family since said statutes went into effect, but relief furnished any such person, shall be within the provisions of section thirty-three of chapter twenty-seven. P. L. 1905, C. 142.

Removal, Resisted, Proceedings.—If a pauper refuses to be removed to the town of his settlement, the person ordered to remove him may complain before a magistrate, who upon a hearing may command such person to execute the order of removal, if he finds that the town to which the pauper is to be removed is liable for his maintenance and support. C. 27, S. 42.

Returning Pauper.—A person removed, as provided in this chapter, to the place of his settlement, who voluntarily returns to the town from which he was removed, without the consent of the overseers, may be sent to the house of correction or jail as a vagabond. *Ibid.*, S. 43.

Unincorporated Places.—Persons found in places not incorporated and needing relief, are under the care of the overseers of the oldest incorporated adjoining town, or the nearest incorporated town where there are none adjoining, who shall furnish relief to such persons, as if they were found in such towns; and such overseers may bind to service the children of such persons as they may those of paupers of their own town, and may bind out persons described in section twenty-eight in manner therein provided, residing in such unincorporated place, as if in their own town, and such persons shall be entitled to a

like remedy and relief. When relief is so provided, the towns so furnishing it have the same remedies against the towns of their settlement as if they resided in the town so furnishing relief. And when such paupers have no legal settlement in the state, the state shall reimburse said town for the relief furnished to such an amount as the governor and council adjudge to have been necessarily expended therefor. And the reasonable expenses and services of said overseers relative to such paupers, shall be included in the amount to be so reimbursed by the state. *Ibid.*, S. 30.

When persons residing in an unincorporated place, and having no pauper settlement in the state, remove from such place to any town and there need relief, and the same is furnished to them by the town, the state shall reimburse said town for such relief so furnished in the same manner and under the same restrictions as to the amount reimbursed as provided in the preceding section. *Ibid.*, S. 31.

State Paupers Removed.—Whenever towns that are compelled to care for and furnish relief to state paupers in unincorporated places, for reasons of economy, desire to remove the same into their own town, their overseers of the poor may make a written request, stating their reasons, to the governor and council, who shall examine the same, and if in their judgment such state paupers would thereby be supported with less expense to the state, may permit in writing such transfer to be made. Whenever state paupers are thus transferred and maintained in a town for such purposes, they do not become paupers of such town by reason of residence therein, while so maintained. *Ibid.*, S. 32.

PAUPERS.

See "Overseers of the Poor."

PETROLEUM INSPECTORS.

See "Selectmen."

POLICE.

See "Selectmen."

Port Wardens.—Port wardens are elected in any town situated upon navigable waters on the petition of ten or more citizens engaged in commercial pursuits therein. If there is in the town a board of trade duly incorporated, such board is required annually to elect the port wardens; otherwise the municipal officers elect them. They must be men of commercial or nautical experience, and are sworn faithfully to perform their duties.

When requested by any person interested, it is their duty to proceed on board of any vessel arriving in port, survey her hatches, examine

the condition and stowage of the cargo, and, if found damaged, to inquire into and ascertain the cause thereof and make a memorandum of the same. They likewise survey the cargo of any vessel arriving in port in distress, enter in their books a complete report of its condition, and their recommendation as to the disposal of portions of the same. They are likewise required to survey any vessel which has suffered wreck or damage or which is deemed unseaworthy, and to call to their assistance one merchant and one shipwright who shall be competent and disinterested persons. With their aid a complete survey is made and a particular report thereof is recorded in the books of the port warden's office. C. 38, SS. 23-32.

REGISTRARS OF VOTERS.

See "Assessors of Taxes."

ROAD COMMISSIONER.

Election.—Each town at its annual meeting may elect by ballot and major vote a road commissioner, who shall hold his office for the term of one year from the date of his election. Any town may, at its option, elect not more than three commissioners whose powers and duties shall be the same as prescribed for a single commissioner.

No person shall, at the same time, hold the office of road commissioner and selectman. C. 4, S. 13.

If the person elected fails to qualify before the first Monday of April, the office shall be deemed vacant, and shall be filled by the selectmen by appointment; and in the event of a vacancy caused by death or otherwise, the selectmen shall appoint some competent person to fill out the unexpired term, who shall qualify and perform the duties of the office. *Ibid.*, SS. 14, 15.

Selectmen Act When.—If a town fails to elect a road commissioner at its annual meeting, the money raised and assessed for the repair of bridges and ways as provided by section seventy of chapter twenty-three, shall be expended for that purpose by the selectmen. *Ibid.*, S. 15.

Duties.—Road commissioners shall go over the roads in their towns, or cause it to be done, in April, May, June, August, September, October and November in each year, remove the loose obstructions to the public travel, and whenever so directed by the selectmen, remove all shrubbery and bushes growing within the limits of highways, not planted or cultivated therein for the purpose of profit or ornamentation, having care for the proper preservation of shade trees, and repair such defects as may occur from time to time, rendering travel dangerous, or they shall give notice of such defects to the municipal officers, under a penalty of five dollars for neglect of such duty. C. 23, S. 66.

Powers and Duties; General Compensation.—The road commissioner under the direction of the selectmen, shall have charge of the repairs of all highways and bridges within the towns and shall have authority to employ the necessary men and teams, and purchase timber, plank and other material for the repair of highways and bridges. He shall give bond to the satisfaction of the selectmen, and be responsible to them for the expenditure of money, and discharge of his duties generally. His compensation shall be such sum as the towns shall annually vote therefor, which sum shall, in no case be less than one dollar and fifty cents a day, for every day of actual service; and he shall render to the selectmen monthly statements of his expenditures, and receive no money from the treasury except on the order of the selectmen. *Ibid.*, S. 72.

A road commissioner who fails to give a bond is not an officer *de jure*. An officer *de facto* is not entitled to the compensation or emoluments of the office.—*Willey v. Windham*, 95 Me. 484; *Andrews v. Portland*, 79 Me. 484.

Accounts.—He shall keep accurate accounts, showing in detail, all moneys paid out by him, to whom and for what purpose; he shall settle his accounts on or before the twentieth day of February, annually, and the same shall be reported in the annual town report in detail. In case no commissioner is elected by a town at its annual meeting, the selectmen of said town shall keep accurate accounts showing in detail all moneys paid out by them for the repair of bridges and ways, to whom and for what purpose, and the same shall be reported in the annual town report in detail. *Ibid.*, S. 73.

Annual Reports.—Road commissioners, in common with all other persons charged with the expenditure of money of a town, shall on or before the morning of each annual meeting, make a full, detailed, written, or printed report of all their financial transactions in behalf of the town during the municipal year immediately preceding, with a full account of the receipts and disbursements during that period and to whom, and for what purpose each item of the same was paid.

Such report shall be kept deposited in the office of the selectmen, or if they have no office or usual place of business, with the town clerk, with proper vouchers for the disbursements reported, where such reports and vouchers shall be open during the usual business hours to the inspection of voters. C. 4, S. 41.

Appropriation Insufficient.—When the amount appropriated is not sufficient to repair the ways, a road commissioner may, with the written consent of the selectmen, employ inhabitants of the town to labor on such ways, to an amount not exceeding fifteen per cent of the amount so appropriated and in addition thereto. C. 23, S. 69.

The surveyor of highways could not, under Stat. 1821, c. 118, employ persons to labor at the expense of the town without the consent of the selectmen.—*Haskell v. Knox*, 3 Me. 446.

A surveyor of highways cannot maintain an action against the town for services in building a bridge across the highway within his district without the consent or knowledge of the selectmen.—*Moor v. Cornville*, 13 Me. 294.

A surveyor who, having used up the amount appropriated for the repair of the road and finding it insufficient, is directed by the selectmen to proceed with the work and expends a further sum, has no remedy against the town for remuneration unless such direction be in writing.—*Morrell v. Dixfield*, 30 Me. 159; *Field v. Towle*, 34 Me. 406.

A highway surveyor cannot recover from the town money paid by him for labor in repairing the highways unless he had written authority from the selectmen to employ the labor, although the amount of taxes assigned to his limits had not been expended and the persons taxed neglect or refuse to pay such taxes after due notice.—*Ingalls v. Auburn*, 51 Me. 352.

An order by the selectmen to a surveyor of highways does not authorize him to perform the labor, pay the employees and look to the town for reimbursement, but only to employ the men and make return of their work to the selectmen.—*Getchell v. Wells*, 55 Me. 437.

Contracts as Authorized.—Towns may authorize their road commissioners or other persons to make contracts for opening or repairing their ways. C. 23, S. 75.

Logs and Lumber, Removal.—When logs, lumber, or other obstructions, without necessity are left on such ways, any road commissioner, or when no road commissioner is chosen, one of the municipal officers, may remove them; and he shall not be liable for loss or damage thereof, unless occasioned by design or gross negligence. When no one appears to pay the expense and trouble of removal, he may sell at public auction so much thereof, as is sufficient for the purpose, with charges of sale, posting notice of the time and place of sale in two public places in the town seven days prior thereto. The person, through whose neglect or wilful default they were left, may be prosecuted as for a nuisance. *Ibid.*, S. 88.

A nuisance in a town road or public highway may be removed by any one whose passage is obstructed by it.—*Mann v. Marston*, 12 Me. 38.

The right to flood land does not authorize one to obstruct or injure the public highway existing upon the land at the time of the grant.—*Monmouth v. Gardiner*, 35 Me. 253.

Towns are not liable for obstructions on the portions of the highway not constituting the traveled path, and not so connected with it as to affect the safety of the traveled portion.—*Dickey v. Maine Tel. Co.*, 46 Me. 483.

When one returning home with a loaded team is stopped by obstructions in the highway, and is compelled to take a circuitous route, he may recover damages from the person who placed the obstructions there.—*Brown v. Watson*, 47 Me. 161.

If the owners of a mill cast slabs, edgings and other waste into the river to be floated away by the stream and thereby the navigation of the river is obstructed, or the rights of private individuals are infringed, they become liable to an action for damages.—*Gerrish v. Brown*, 51 Me. 256.

In order to render the town liable, reasonable notice of the obstruction must be given and that it is unnecessarily in the way; it is knowledge of the illegal element which constitutes it a defect.—*Bartlett v. Kittery*, 68 Me. 361.

Materials Taken.—A road commissioner may remove any obstacle which obstructs or is likely to obstruct a way or render its passage

dangerous. He may dig for stone, gravel, or other material suitable for making or repairing ways in land not enclosed or planted, and remove the same to the ways. If the land from which such materials were taken is not within the limits of the ways, the owner of it shall be paid therefor in money by the town, to be recovered after demand and refusal by the road commissioner in an action as on an implied promise. C. 23, S. 65.

In repairing highways, surveyors incur them with materials at their peril. Towns are liable for injuries received in consequence of obstructions placed or deposited in the highways as for inherent defects.—*Frost v. Portland*, 11 Me. 271.

Trespass cannot be maintained by the owner of land unfenced against one employed in making a road whose cattle used in the work strayed on the land. *Cool v. Crommet*, 13 Me. 250.

Where a highway is defective and undergoing repairs, the general liability of the town is not suspended if the way is left open for the passage of travelers. Notice should be given of its condition, and travelers perceiving that the way is under repairs are bound to exercise that degree of watchfulness and caution which men of ordinary prudence would use under such circumstances.—*Jacobs v. Bangor*, 16 Me. 190.

A surveyor constructing a road under instruction of the selectmen may take a quantity of stone necessary for the proper repair of the road from land contiguous to the road without committing trespass.—*Keene v. Chapman*, 25 Me. 126.

A surveyor of highways has no authority to subject to a public easement any land not lying within the lines of the road; he cannot make a ditch through adjoining improved lands for the purpose of conveying water away from the highway.—*Plummer v. Sturtevant*, 32 Me. 325.

Towns may interrupt travel to make necessary repairs of streets and sidewalks, but must place signals of danger to warn travelers and citizens.—*Kimball v. Bath*, 38 Me. 219.

No action lies against a surveyor of highways for digging down a street or road with discretion, and not wantonly, when acting under legal authority.—*Hovey v. Mayo*, 43 Me. 332.

A town is not liable for the tortious acts of a surveyor of highways though done in the course of his employment, as in the case of using split stones found in the limits of the highway, which was a trespass.—*Small v. Danville*, 51 Me. 359.

The above doctrine does not apply when the surveyor acts under the direction of the city government.—*Woodcock v. Calais*, 66 Me. 234.

A highway surveyor may, by virtue of his official authority, lawfully construct an alteration in an existing road in his district, without subjecting himself to an action of trespass by the landowner whose interests are affected by such alteration.—*Cyr v. Dufour*, 68 Me. 499.

Money for Ways and Bridges.— Towns shall annually raise money to be expended on town ways and highways, and for the repair of bridges, and the same shall be assessed and collected, as other town taxes, and expended for said purposes, by a road commissioner or commissioners or by the selectmen as each town may determine. *Ibid.*, S. 70.

When a town has surveyors of highways duly appointed by the municipal officers, the selectmen cannot bind the town by a contract for labor on the highways.—*Tufts v. Lexington*, 72 Me. 516.

Money, When and How Expended.— Sixty-five per cent of the highway taxes assessed shall be expended upon the highways prior to the fifteenth day of July, and the balance at such time as the commissioner, or in case no commissioner is elected, as the selectmen deem for the best good of the public. *Ibid.*, S. 71.

Snow Removed.— When any ways are blocked or encumbered with snow, the road commissioner shall forthwith cause so much of it to be removed or trodden down, as will render them passable. The town may direct the manner of doing it. In case of sudden injury to ways or bridges, he shall, without delay, cause them to be repaired. *Ibid.*, S. 62.

A street or road commissioner has power to rebuild upon a larger scale a retaining wall for a public street when such wall is necessary to make the street safe and convenient, and when the municipality has provided land and funds therefor. In such work he acts as a public officer, unless it is shown that the municipality assumed the direction of the work, and the municipality is not liable to third parties for his negligence in prosecuting the work.— *Bowden v. Rockland*, 96 Me. 133.

Trees Planted.— A sum not exceeding five per cent of the amount raised for repair of ways and bridges may be expended by a road commissioner under the direction of the municipal officers, in planting trees about public burying-grounds, squares, and ways, if the town by vote authorizes it. *Ibid.*, S. 64.

SALT, CORN AND GRAIN MEASURERS.

See "Selectmen."

SCHOOLS.

Superintending Committee, Election.— Every town is required to choose by ballot, at the annual town meeting, a superintending school committee of three, who at their first meeting designate by lot a member or members to hold office for one, two and three years, respectively, and certify such designation to the town clerk to be by him recorded; and thereafter one member is chosen annually at the annual meeting of the town, to hold office for three years. The committee may fill vacancies occurring in their own number, such appointees to hold office until the next annual town meeting. No person is ineligible to the office on account of sex. No member of the committee of any town may be employed as a teacher in any public school in the town. C. 15, SS. 29, 30.

A town failing to elect members of the superintending school committee as required by law, forfeits not less than thirty nor more than two hundred dollars. *Ibid.*, S. 32.

Powers and Duties.— The management of the schools and the custody and care, including repairs and insurance on school buildings, of all school property in every town, shall devolve upon the superintending school committee which shall annually, and as often as a vacancy shall occur, elect a superintendent of schools who shall not be a member of the committee. This section shall not apply to cities, nor to towns authorized by special laws to employ or choose superintendents in manner otherwise than as herein provided.

Superintending school committees shall perform the following duties:

I. Direct the general course of instruction, and select a uniform system of text-books, due notice of which shall be given; no text-book thus introduced, shall be changed for five years unless by vote of the town; any person violating this provision shall forfeit not exceeding five hundred dollars, to be recovered in an action of debt by any school officer or person aggrieved. And when said committee have made such selection of school books, they may contract, under section nineteen, with the publishers for the purchase and delivery thereof; make such rules as they deem effectual for their preservation and return; or, if they are kept for sale, may regulate the sale and appoint an agent to keep and sell them, and fix the retail price, which shall be marked on the title page of each book.

II. They shall make provision for the instruction of all pupils in *all* schools, supported by public money or under state control, in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system.

III. After due notice and investigation, they shall dismiss any teacher, although having the requisite certificate, who proves unfit to teach, or whose services they deem unprofitable to the school; and give to said teacher a certificate of dismissal and of the reasons therefor, a copy of which they shall retain, and such dismissal shall not deprive the teacher of compensation for previous services.

IV. Expel any obstinately disobedient and disorderly scholar, after a proper investigation of his behavior, if found necessary for the peace and usefulness of the school; and restore him on satisfactory evidence of his repentance and amendment.

The parent of a child expelled from a public school by order of the superintending school committee cannot maintain an action against them for such expulsion.— *Donahoe v. Richards*, 38 Me. 376.

V. Exclude, if they deem it expedient, any person not vaccinated, although otherwise entitled to admission.

VI. Prescribe the sum, on payment of which persons of the required age, resident on territory, the jurisdiction of which has been ceded to the United States, included in or surrounded by the town may attend school in the town.

VII. Determine what description of scholars shall attend each school,

classify them, and transfer them from school to school where more than one school is kept at the same time. C. 15, SS. 34, 35.

A school committee of three appointed by a district has no authority to hire a schoolmaster, that power being vested in the school agent by Stat. 1821, c. 117.—*Moor v. Newfield*, 4 Me. 44.

The committee have no power to dismiss a schoolmaster unless for one of the causes mentioned in the statute. This must be by writing under their hands specially assigning the cause of dismissal.—*Searsmont v. Farwell*, 3 Me. 450.

When there are three members of a superintending school committee, two of them have no power to dismiss a schoolmaster unless due notice has been given to the third that he might have opportunity to attend and act with them.—*Jackson v. Hampden*, 16 Me. 184.

The committee has full and exclusive power to direct the general course of instruction and what books shall be used in the schools. They may rightfully enforce obedience to all the regulations by them made within the sphere of their authority. The requirement by the committee that the Protestant version of the Bible shall be read in the public schools is in violation of no constitutional provision.—*Donahoe v. Richards*, 38 Me. 379.

A superintending school committee ratified the act of an agent in employing a teacher by visiting his school and approving its management, and so bound the town to pay for his services.—*Woodbury v. Knox*, 74 Me. 462.

Serve Without Pay.—Superintending school committees shall serve without pay, unless otherwise voted by the town, but the superintendent shall receive for his services such sum as the town shall annually vote therefor, which sum shall in no case be less than two dollars a day for every day of actual service and necessary traveling expenses. *Ibid.*, S. 33.

Age of Pupils.—The age of pupils allowed to attend the public schools of the state is fixed between the ages of five and twenty-one years. *Ibid.*, S. 27.

Children Living Remote from School.—Children living remote from any public school in the town in which they reside may be allowed to attend the public schools, other than a high school, approved as provided in section sixty-three, in an adjoining town, under such regulations and on such terms as the school committees of such towns agree upon and prescribe, and the school committee of the town in which such children reside shall pay the sum agreed upon out of the appropriations of money raised in said town for school purposes. *Ibid.*, S. 50.

Compulsory Attendance.—Every child between the seventh and fifteenth anniversaries of his birth shall attend some public day school during the time such school is in session, and an absence therefrom of one-half day, or more, shall be deemed a violation of this requirement; *provided* that necessary absence may be excused by the superintending school committee or superintendent of schools or teacher acting by direction of either; *provided also*, that such attendance shall not be required if the child obtain equivalent instruction, for a like period of

time, in an approved private school or in any other manner approved by the superintending school committee; *provided, further*, that children shall not be credited with attendance at a private school until a certificate showing their names, residences and attendance at such school signed by the person or persons having such school in charge, shall be filed with the school officials of the town in which said children reside; and *provided further*, that the superintending school committee may exclude from the public schools any child whose physical or mental condition makes it inexpedient for him to attend. All persons having children under their control shall cause them to attend school as provided in this section, and for every neglect of such duty shall be punished by a fine not exceeding twenty-five dollars, or shall be imprisoned not exceeding thirty days. C. 15, S. 49.

By-laws.—Towns may make such by-laws, not repugnant to law, concerning habitual truants, and children between six and seventeen years of age not attending school, without any regular and lawful occupation, and growing up in ignorance, as are most conducive to their welfare and the good order of society; and may annex a suitable penalty, not exceeding twenty dollars, for any breach thereof; but such by-laws must be first approved by a judge of the supreme judicial court. *Ibid.*, S. 46.

Districts; Powers.—The school districts in all towns in the state are abolished. *Provided, however*, that school districts organized with special powers by act of the legislature, may retain such organization and special powers; but said districts shall annually, on or before the first day of June, by their agents, trustees or directors, submit to the school committees of their several towns estimates of the amounts required for the maintenance of the schools therein, other than free high schools, for the ensuing school year, and shall be entitled to such portion of the common school funds of the town as said committees shall determine, which sum shall not be less than is necessary for the maintenance of their schools for a period equal to that of the other schools of the town; and *provided further*, that the corporate powers of every school district shall continue so far as the same may be necessary for meeting its liabilities and enforcing its rights; and any property held in trust by any school district by virtue of a gift, devise or bequest for the benefit of said district shall continue to be held and used according to the terms thereof. *Ibid.*, S. 1.

The central school district having ceased to exist, there is neither trustee nor beneficiary capable of taking the fund left by will to the district.—*Brooks v. Belfast*, 90 Me. 318.

A school district organized by the town and not by special act of the legislature is not within the proviso of P. L. 1893, c. 216, § 1, abolishing school districts, and hence is not entitled to receive for its own expenditure any part of the town's money raised for the support of schools.—*School District v. Deering*, 91 Me. 516.

Equal Privileges to Pupils.—The school moneys of every town shall be so expended as to give as nearly as practicable the same aggregate annual length of terms in all its schools, and every town shall make provision for the maintenance of all its schools for not less than twenty weeks annually. Any town failing to maintain its schools as provided in this section, shall be debarred from drawing its state school moneys, till it shall have made suitable provisions for so maintaining them thereafter. C. 15, S. 17.

Evening Schools.—Any city or town may, in addition to the sum raised for the support of the common schools, raise and appropriate money for the support of evening schools, which shall admit persons of any age, shall teach only the elementary branches, and shall be under the direction and supervision of the superintending school committee. *Ibid.*, S. 22.

High Schools, State Aid.—Any town which establishes and maintains a free high school as provided by this section and the ten following sections, for at least ten weeks in any one year, shall on complying with the conditions hereinafter set forth, receive from the state one-half the amount actually expended for instruction in said school, not exceeding two hundred and fifty dollars; *provided*, that no town shall receive such state aid unless its appropriation and expenditure for such school has been exclusive of the amounts required by law for common school purposes.

The inhabitants of any section of a town which fails or neglects to provide for the maintenance of free high schools, may organize a free high school precinct in the manner hereinafter provided, and may establish and maintain a free high school therein, and receive state aid the same as the town might have done; *provided*, that no more than two such free high schools shall be established in any town, and that the amount of aid extended to the precincts in any town shall not exceed the sum that the town might have received. *Ibid.*, SS. 55, 57.

Towns Not Maintaining.—Any town which does not maintain a free high school of standard grade may from year to year authorize its superintending school committee to contract with and pay the trustees of any academy in said town, or with the school board of any adjoining town for the tuition of scholars within such town in the studies contemplated by the seven preceding sections, under a standard of scholarship to be approved by such committee; and when such contract has been made the trustees of the academy and the school committee in equal numbers shall form a joint committee for the selection of teachers and the arrangement of a course of study in such academy when the academy has less than ten thousand dollars endowment; and the expenditure of any town for tuition in such academy or high school shall

be subject to the same conditions, and shall entitle such town to the same state aid as if it had made such expenditure for a free high school. *Ibid.*, S. 62.

Industrial Drawing.— Any city or town may annually make provision for free instruction in industrial or mechanical drawing, to persons over fifteen years of age, either in day or evening schools, under direction of the superintending school committee. C. 15, S. 23.

Location; Number of Schools.— The location of any school legally established prior to March seventeen, eighteen hundred and ninety-three continues unchanged, notwithstanding the district is abolished; but any town at its annual meeting, or at a meeting called for the purpose, may determine the number and location of its schools, and may discontinue them or change their location; but such discontinuance or change of location shall be made only on the written recommendation of the superintending school committee, and on conditions proper to preserve the just rights and privileges of the inhabitants for whose benefit such schools were established; *provided, however*, that in case any school shall hereafter have too few scholars for its profitable maintenance, the superintending school committee may suspend the operation of such school for not more than one year unless otherwise instructed by the town, but any public school failing to maintain an average attendance for any school year of at least eight pupils shall be and hereby is suspended, unless the town in which said school is located shall by vote, at the annual meeting, after the said committee shall have made a written recommendation to that effect, instruct its superintending school committee to maintain said school. *Ibid.*, S. 2.

Manual Training.— Any town may, in addition to the sum raised for the support of the common schools, raise and appropriate money for the support of manual training schools and may receive gifts and bequests for the use, maintenance and support of such schools.

Such schools shall be under the control, direction and supervision of the superintending school committee, and shall admit such persons between the ages of six and twenty-one years, and shall give such courses of instruction as said committee may determine. Pupils in such schools shall be subject to the same conditions, rules and regulations as are provided for public schools. *Ibid.*, SS. 24, 25.

Permanent School Funds.— All towns incorporated since seventeen hundred and eighty-eight, not formerly parts of other towns, which fail to account for the permanent school fund arising from sale or lease of school lands in said towns, shall annually raise and expend for the maintenance of common schools not less than forty-five dollars in addition to the amount required by law to be raised and expended for the support of said schools. *Ibid.*, S. 14.

State Aid Withheld When.— When the governor and council have reason to believe that a town has neglected to raise and expend the school money required by law, or to examine teachers, or to have instruction given in the subjects or to provide suitable text-books in the subjects, prescribed by law, or faithfully to expend the school money received from the state, or in any way, to comply with the laws prescribing the duties of towns in relation to public schools, they shall direct the treasurer of state to withhold further payment to such town from the state school fund and mill tax, until such town satisfies them that it has expended the full amount of school money as required by law. C. 15, S. 16.

Committees, Vacancies; Truant Officers.— Superintending school committees may fill vacancies occurring during the year and shall elect truant officers at their first meeting after the annual meeting of the town in case the town neglects to do so, or the truant officers elect, or any of them, fail to qualify. *Ibid.*, S. 51.

Support; Towns to Raise Money.— Every town shall raise and expend, annually, for support of common schools, therein, exclusive of the income of any corporate school fund, or of any grant from the revenue or funds from the state, or of any voluntary donation, devise or bequest, or of any forfeiture accruing to the use of schools, not less than eighty cents for each inhabitant, according to the census by which representatives to the legislature were last apportioned, under penalty of forfeiting not less than twice nor more than four times the amount of its deficiency, and all moneys provided by towns, or apportioned by the state for the support of common schools, shall be expended for the maintenance of common schools established and controlled by the towns by which said moneys are provided, or to which said moneys are apportioned; but nothing in this section shall be so construed as to annul, or render void, the provisions made in section eighteen of this chapter for the establishment and maintenance of union schools by adjoining towns. *Ibid.*, S. 13.

The legislature has the power to assess a general tax on the property of the state for the purpose of distribution under an act to establish the school mill fund for the support of common schools of February 27, 1872.— *Opinions of Justices*, 68 Me. 584.

School agents are public officers. Their election and performance of official duties raise no implied promise on the part of the district or town to pay them for their services.— *Talbot v. East Machias*, 76 Me. 416.

The power of the state to direct a town to make municipal improvements, and to impose a tax upon the property of the citizens of the town to pay the necessary expenses is illustrated by the statute requiring the towns to raise and expend money for the support of schools. *Reynolds v. Waterville*, 92 Me. 327.

Text-books and Supplies Provided.— Towns shall provide school books, apparatus and appliances for the use of pupils in the public

schools, including all free high schools at the expense of the town, * * * *provided*, that any parent or guardian of any pupil in the public schools may at his own expense, procure for the separate and exclusive use of such pupil, the text-books required to be used in such schools. *Ibid.*, S. 19.

Truant Officers; Election; Duties.—Cities and towns shall annually elect one or more persons, to be designated truant officers, who shall inquire into all cases of neglect of the duties prescribed in section forty-nine and ascertain the reasons therefor, and shall promptly report the same to the superintending school committee, and such truant officers or any of them shall, when so directed by the school committee or superintendent in writing, prosecute in the name of the city or town, any person neglecting to perform the duties prescribed in said section, by promptly entering a complaint before a magistrate; and said officers shall, when notified by any teacher that any pupil is irregular in attendance, arrest and take such pupil to school when found truant; and, further, such officers shall enforce the provisions of sections one hundred and eighteen to one hundred and twenty inclusive of this chapter. Every city or town neglecting to elect truant officers, and truant officers neglecting any duty required of them under the provisions of this chapter shall forfeit not less than ten or more than fifty dollars. The municipal officers shall fix the compensation of the truant officers elected as prescribed by this section. C. 15, S. 51.

SCHOOL SUPERINTENDENT.

See "Schools."

SEALERS OF LEATHER.

Sealers of leather are elected annually at the annual town meeting or may be appointed by the selectmen; and the municipal officers may appoint one or more suitable inspectors of sole leather, who are required to provide themselves with proper apparatus for weighing and stamping the hides submitted to them. Special directions are given by the statute as to the mode of stamping the leather. C. 40, SS. 15, 16.

SEALER OF WEIGHTS AND MEASURES.

The municipal officers are required to appoint annually a sealer of weights and measures, removable at pleasure, whose duty it is, after qualifying and giving notice of his appointment, to adjust and seal the weights, measures and balances of all persons who use such implements for the purpose of selling any goods, wares, merchandise or other commodities or for public weighing, by comparison with the standards furnished to him by the town treasurer. C. 44, SS. 5-20.

SELECTMEN.

Election, Failure; Penalty.— Three, five, or seven inhabitants of the town shall be chosen at the annual meeting in March, by ballot and major vote, to be selectmen and overseers of the poor, when other overseers are not chosen, who shall be sworn: *Provided*, however, any town electing three selectmen, three overseers of the poor and three assessors, if it shall vote so to do, may elect one member of each of the three above named boards for one year, one for two years and one for three years, and at each annual meeting thereafter, one member of each of said boards shall be elected for a term of three years. Towns electing more than three selectmen, three overseers of the poor and three assessors may by vote determine how many of each of said boards shall be elected annually and the tenure of their office. C. 4, S. 12.

Any town neglecting to choose selectmen or assessors forfeits to the state not exceeding three hundred nor less than one hundred dollars as the supreme judicial court orders. C. 9, S. 90.

Oath, Neglect to Take; Penalty.— Every person duly notified who neglects to take his official oath within seven days after such notice, except officers for whose neglect a different penalty is provided, forfeits five dollars. C. 4, S. 26.

The penalty annexed by law to the refusal to accept a town office does not extend to a collector of taxes.

The refusal to find sureties required by the town is a non-acceptance of the office of collector even after the person chosen has taken the oath of office.— *Morrell v. Sylvester*, 1 Me. 248.

Compensation, Generally.— Towns having four thousand or more inhabitants may vote to pay their selectmen a compensation not exceeding five dollars a day, for time actually spent in the service of the town. C. 9, S. 89.

Municipal Officers.— By statutory definition the term “municipal officers” includes the mayor and aldermen of cities, the selectmen of towns, and the assessors of plantations. C. 1, S. XXV.

Treasurers and Collectors Not Eligible.— Treasurers and collectors of towns shall not be selectmen or assessors until they have completed their duties and had a final settlement with the town. C. 4, S. 12.

Neglect of Duty, Penalty.— Every town officer, who neglects any duty lawfully required of him, forfeits not exceeding twenty dollars for every such neglect, where no other penalty is provided. *Ibid.*, S. 112.

The terms of section 62, chapter 6, Revised Statutes, providing that “in no case shall any officer of any city, town, or plantation, incur any punishment or penalty, or be made to suffer in damages, by reason of his official acts or neglects, unless the same shall be unreasonable, corrupt, or wilfully oppressive,” apply to all cases and to all official acts of every officer of every city, town, or plantation in the state.— *Harlow v. Young*, 37 Me. 91.

Annual Reports.— The selectmen are required, on or before the morning of each annual meeting, to make a full, detailed, written or printed report of all their financial transactions on behalf of the town during the municipal year immediately preceding, with a full account of the receipts and disbursements during that period, and to whom and for what purpose each item of the same was paid, with a statement in detail of the indebtedness and resources of the town. *Ibid.*, S. 41.

Advertisement on Rocks and Trees Forbidden.— Whoever advertises his wares or occupation by painting notices of the same on or affixing them to rocks or other natural objects in the highway, or any other public place, without permission of the municipal officers, forfeits ten dollars. C. 128, S. 13.

Apprentices; Minors Bound.— Minors under the age of fourteen years, having no parent or guardian, may bind themselves as apprentices or servants until that age with the approbation of the municipal officers of the town where they reside. C. 64, S. 1.

Armories Provided.— Municipal officers shall provide for each company of volunteer militia within their towns, a suitable armory or place of deposit for the arms, equipments and equipage, furnished by the state. They shall also provide a suitable room for the safe keeping of books, the transaction of business, and the instruction of officers for each regiment or separate battalion of such militia located within their towns, and suitable places for their parade, target practice and drill. C. 4, S. 68.

Assessors, May Act As.— If any town does not choose assessors, or if so many of them refuse to accept, that there are not such a number as the town voted to have, the selectmen shall be the assessors, and each of them shall be sworn as an assessor. C. 9, S. 89.

In a town which chose at the annual meeting three assessors, one of whom was not sworn and never acted as an assessor, the two who qualified were not authorized to assess a tax.— *Williamsburg v. Lord*, 51 Me. 600.

A town making no choice of assessors voted that the selectmen act as assessors, and the persons so chosen made oath "faithfully and impartially to discharge the duties of selectmen and assessors," it was held that the selectmen were assessors.— *Gould v. Monroe*, 61 Me. 546; *Gerry v. Herrick*, 87 Me. 221.

Where no assessors are elected, the selectmen must each be sworn as assessor or before they can legally assess a tax.— *Dresden v. Goud*, 75 Me. 298.

Assessors of towns are expressly entitled to pay by the statute.— *Talbot v. East Machias*, 76 Me. 416; *White v. Levant*, 78 Me. 569.

Assessor, Vacancy How Filled.— If an assessor chosen and notified to take the oath of office, refuses to be sworn, the selectmen shall forthwith call a town meeting to fill the vacancy. *Ibid.*, S. 99.

Auctioneers' Licenses.— The municipal officers of any town may license any legal voter thereof, by a writing under their hands, to be

auctioneer for one year, in every town in their county; and shall record every such license in a book kept by them for that purpose.

If such officers, after written application to them for a license, unreasonably refuse or neglect to grant it, the applicant, by giving them ten days' notice and a bond to pay all costs arising thereafter, may appeal to the county commissioners, who, after a hearing of the parties, may grant the license if they judge it reasonable. C. 36, S. 2.

Special licenses may also be granted by them to auctioneers, who are voters, upon payment of a fee of five dollars for each invoice of goods sold. *Ibid.*, S. 10.

In sales of real estate at auction, the auctioneer is the agent of both parties. His putting down the name of the purchaser with the price and conditions of sale was a sufficient signing within the statute of frauds.—*Alna v. Plummer*, 4 Me. 263; *Pike v. Balch*, 38 Me. 311.

A license to sell goods by auction is of no force beyond the limits of the town to which the selectmen and the auctioneer belong at the time it was granted.—*Waterhouse v. Dorr*, 4 Me. 333.

All fraudulent acts and all combinations, having for their object to stifle fair competition at the biddings at auction sales, are unlawful.—*Gardiner v. Morse*, 25 Me. 140.

No action can be maintained upon a memorandum of an auctioneer of the sale by him of real estate, unless such memorandum within itself, or by reference to some other paper, shows all the material conditions of the contract.—*O'Donnell v. Leeman*, 43 Me. 160.

To bind the purchaser, a memorandum containing all of the essential terms of the contract must be made and signed by the auctioneer at the time of the sale and before the termination of the proceedings.—*Horton v. M'Carty*, 53 Me. 394.

Bowling-Alleys and Billiard Rooms, Licenses.—Municipal officers of towns may license suitable persons to keep bowling-alleys, pool, bagatelle, and billiard rooms therein, in any place where it will not disturb the peace and quiet of a family, for which the person licensed shall pay ten dollars to such town; such licenses expire on the first day of May after they are granted, unless sooner revoked. C. 31, S. 4.

The licensee is required to give bond with sureties that he will not permit gambling or drinking of intoxicating liquors on the premises; nor allow minors to roll therein without the consent of their parents or guardians; nor keep his alley or room open or in use between ten o'clock in the evening and sunrise; but special permits may be granted to keep such places open till midnight, when the municipal officers are of the opinion that the neighborhood will not be disturbed thereby. *Ibid.*, SS. 5, 8.

An indictment sustained on the ground that the keeping of a bowling-alley was a common nuisance.—*State v. Haines*, 30 Me. 77.

Building Inspector Appointed.—In every town and city of more than two thousand inhabitants, the municipal officers shall annually in the month of April appoint an inspector of buildings, who shall be a man skilled in the construction of buildings, and shall determine his compensation. C. 28, S. 25.

Burying-grounds, Enlargement.— The municipal officers of any town, may on petition of ten voters, enlarge any public cemetery or burying-ground or incorporated cemetery or burying-ground within their town, by taking land of adjacent owners, to be paid for by the town or otherwise as the municipal officers may direct, when in their judgment public necessity requires it; *provided*, that the limits thereof shall not be extended nearer any dwelling-house than twenty-five rods, against the written protest of the owner, made to said officers at the time of the hearing on said petition.

If the municipal officers at a hearing for the purpose grant the prayer of the petitioners, they shall then determine what land shall be taken, and assess the damages suffered by each person thereby, make a written return of their proceedings, specifying the land taken and the damages awarded each person, and file the same with the town clerk; and such cemetery or burying-ground shall not be enlarged, pursuant to such return, until so voted by the town at its next annual meeting. C. 20, SS. 8, 10.

Cattle, Infected, Isolated.— The municipal officers of towns shall cause to be collected and secured in some suitable place, or places, all cattle, swine and sheep therein which have become infected or have been exposed to infection with lung-murrain, pleuro-pneumonia or other contagious disease, such isolation to continue as long as may be necessary, or may direct the owners of such animals to isolate them on their own premises. Any losses and expense sustained thereby shall be paid one-fifth by the town and four-fifths by the state. They may in writing regulate the passage to, from, or through their towns, or from place to place therein, of such animals, and take all other measures necessary to prevent the spread of such diseases. Such regulations shall be recorded in the town records. C. 19, SS. 15-18.

Lands Impressed.— They may take and hold possession for a term not exceeding one year of any land within their towns without building other than barns thereon for enclosing and isolating any cattle, and cause the damages sustained by the owners to be appraised by the assessors and cause a description of such land, together with said appraisal, to be entered in the records of the town. *Ibid.*, S. 23.

Cattle, Notice to Cattle Commission.— Whenever an infectious disease exists among cattle in the town, the municipal officers shall forthwith give notice to the State of Maine Cattle Commission. *Ibid.*, S. 24.

Charcoal Baskets, Unlawful.— The municipal officers of towns may appoint some suitable person to seize and secure all baskets used for measuring coal, not according to the provisions of law. C. 42, S. 9.

Child Protection.— Upon application of the selectmen of any town, the governor and council shall issue a badge and a commission to any

suitable person designated in said application, authorizing such person to arrest persons charged with violating any of the provisions of this act or any other act or law concerning the protection of children or prevention of cruelty to the same. P. L. 1905, C. 123.

Coal Weighers Appointed.— The municipal officers of towns shall annually appoint weighers of anthracite, bituminous, and other mineral coal, who shall receive such fees as said officers may establish, to be paid by the buyer. C. 42, S. 12.

Coasting.— The municipal officers may designate public streets, roads, or sidewalks whereon no person shall slide with any vehicle under a penalty not exceeding five dollars, and the forfeiture of the vehicle to the use of the town. They shall cause such designation of streets, roads and sidewalks to be recorded in the records of the town. C. 4, SS. 69, 70.

Collector Appointed.— When a constable or collector of taxes dies, becomes insane, has a guardian, or by bodily infirmities is incapable of performing the duties of his office, before completing the collection, the municipal officers may demand and receive the tax bills of any person in possession thereof and deliver them to the new collector. C. 10, S. 38.

If a collector refuses to collect a tax the town may choose another for that purpose.— *Carville v. Additon*, 62 Me. 461.

A collector who accepts a warrant with bills of assessment which are in part illegal, and collects a portion of the taxes, is bound to collect of the remainder such as are legally assessed.— *Vassalboro' v. Nowell*, 75 Me. 248.

Where a collector accepts the note of a taxpayer and pays the tax himself to the town treasurer, the town cannot afterwards levy a tax to reimburse the collector for the loss he has sustained by the nonpayment of the note.— *Thorndike v. Camden*, 82 Me. 45.

Objection to the commitment to a collector of unpaid tax lists by a regular warrant, duly signed and delivered, cannot be taken for any alleged irregularity in the election of the assessors, in a proceeding in replevin of property sold under a distraint for nonpayment of taxes.— *Gerry v. Herrick*, 87 Me. 222.

Constables, to Arrest Tramps.— Selectmen shall appoint special constables to arrest and prosecute all tramps in their town. C. 129, S. 35.

Contagious Disease, Prevent Spread.— When any disease dangerous to the public health exists in a town, the municipal officers shall use all possible care to prevent its spread, and shall give public notice of infected places to travelers, by displaying red flags at proper distances, and by all other means most effectual, in their judgment, for the common safety. C. 18, S. 79.

The employment of a physician would be within the line of duty of the selectmen, but to render the town liable he must be employed by them.— *Kellogg v. St. George*, 28 Me. 257.

When the small-pox or any other contagious disease exists in any town or city, the law demands the utmost vigilance to prevent its spread. *Salus populi suprema lex*, is the governing principle in such cases.— *Seavey v. Preble*, 64 Me. 121.

County Commissioner Not Eligible.— No person holding the office of county commissioner shall, on and after April one, nineteen hundred and four at the same time hold the office of selectman or assessor of a town. C. 80, S. 8.

Dogs, Payment for Damage Done.—Whenever damage is done to sheep or other domestic animals owned by a resident of this state, by dogs or wild animals, such owner may make complaint thereof to one of the municipal officers of the town where the damage was done within twenty-four hours after he has knowledge of the same; and thereupon the municipal officers shall investigate such complaint, and, if satisfied that such damage was done by dogs or wild animals within the limits of their town, they shall estimate the amount thereof and direct the same to be paid from the town treasury. C. 4, S. 53.

Dogs, Refund by State of Damages.— When damages done by dogs paid by a town cannot be recovered from the owners or keepers of said dogs, or the dogs cannot be identified, or when a town has paid damages caused by wild animals, the municipal officers of such town shall forward to the state treasurer a statement of the facts in each case; and the treasurer shall reimburse such town to the amount of such damage from the fund received by the state under section forty-six. *Ibid.*, S. 55.

Dogs, Warrants for Killing.— The municipal officers of towns and plantations shall annually within ten days from the first day of May issue a warrant to one or more police officers or constables directing them to proceed forthwith either to kill or cause to be killed all dogs within such town or plantation not licensed and collared or inclosed according to the provisions of this chapter, and to enter complaint against the owners or keepers, thereof. All bills for such services shall be approved by the municipal officers of towns and plantations. *Ibid.*, S. 49.

The statute which provides for killing unlicensed dogs by a constable only, under a warrant, impliedly forbids killing by any other person.— *Chapman v. Decrow*, 93 Me. 389.

Drains and Sewers; Drains Laid Out.— The municipal officers of a town, or a committee duly chosen by the town, may, at the expense of the town, construct public drains or sewers along or across any public way therein; and through any lands of persons or corporations, when they deem it necessary for public convenience or health; but neither the municipal officers of the town, nor such committee, shall construct any public sewer therein until the same shall be authorized by vote of said town, and an appropriation made for the purpose; and when constructed such sewers shall be under the control of the municipal officers.

Before the land is so taken, notice shall be given, and damages assessed and paid therefor as is provided for the location of town ways. C. 21, SS. 2, 3.

Expense Estimated and Assessed.— The municipal officers determine all questions of damages and betterments arising from the construction of such drains and sewers, first filing in the town clerk's office the location thereof and a statement of the assessments upon the several lots or parcels of land, with an order for a public hearing signed by the town clerk.

Any person not satisfied with the amount which he is assessed may have the assessment upon his lot determined by arbitration before a board of three referees chosen from six residents of the town, nominated by the municipal officers, from whom two are selected by the applicant and the third by the two so selected by him. The award made by the referees shall be final and binding upon all parties. C. 21, SS. 5, 6.

No action can be maintained against a town for neglecting to repair a drain across its highways, *per quod* the water accustomed to flow through it was forced back upon the adjoining land, unless it appears that an obligation to construct the drain was imposed on the town by the statute or common law.

The common law requires a town to build a drain only where its highway would otherwise obstruct the flow of water in its natural channel, or cause it to collect and stand upon adjoining land to the injury of the owner.—*Estes v. China*, 56 Me. 407.

The right to construct sewers having an outfall into a public dock must be exercised conjointly with the public right of navigation and the rights of the owners of wharves lawfully erected in such waters. It is not a right to create a nuisance. If deposits from the sewers accumulate in such quantities as to obstruct navigation, or cause special and particular damage to the owners of wharves, it is the duty of defendants to remove them.—*Franklin Wharf v. Portland*, 67 Me. 46.

A municipal corporation is liable to an indictment, if they so construct their public sewers that the outfalls thereof create a public nuisance, noisome and prejudicial to the public health, provided the accumulations of filth thence proceeding are not promptly removed.—*State v. Portland*, 74 Me. 268.

A town as such has no authority incidental to its corporate powers to lay out and construct public drains and sewers; that duty is imposed upon the municipal officers, who act, not as agents of the town, but as public officers, and do not render the town liable by their acts.—*Bulger v. Eden*, 82 Me. 352.

In the performance of its duty to the public in locating sewers for the drainage of the city, the city council acts judicially, and for that judicial act the city is under no common-law liability.—*Attwood v. Bangor*, 83 Me. 585.

A land owner may be required to contribute towards the cost of a public work a sum equal to the increased value of his property by reason of peculiar and special benefits thereby given, in addition to those bestowed upon him in common with the general public.—*Auburn v. Paul*, 84 Me. 212.

By virtue of the statute the authority to lay out and construct public drains and sewers, as well as the subsequent control over them is clearly vested not in a city or town as a corporation, but in the municipal officers as representatives of the general government.—*Gilpatrick v. Biddeford*, 86 Me. 539; *Bulger v. Eden*, 82 Me. 352: liabilities of municipal corporations set forth.

In exercising the authority conferred upon them by the statute, the municipal officers act, not as agents of the town, but as public officers intrusted with a large discretion and appointed by law to exercise absolute control over the subject-matter.—*Hamlin v. Biddeford*, 95 Me. 311; *Gilpatrick v. Biddeford*, 86 Me. 534, and cases cited.

Private Drains.— Any person may enter his private drain into any such public drain or common sewer, while the same is under construction and before the same is completed, and before the assessments are

made, on obtaining a permit in writing from the municipal officers, or the sewer board having the construction of the same in charge; but after the same is completed and the assessments made, no person shall enter his private drain into the same, until he has paid his assessment and obtained a permit in writing from the town treasurer, by authority of the municipal officers. All permits given to enter any such drain or sewer, shall be recorded by the clerk of said town before the same are issued. *Ibid.*, S. 7.

Abutters upon the line of a public drain existing in any town which has not accepted the provisions of the eight preceding sections, and abutters upon the line of a public drain constructed prior to such acceptance, and the owners of contiguous private drain, may enter and connect with such public drain on written application to the municipal officers, distinctly describing the land to which it applies, and paying therefor what they determine. They shall then give the applicants written permits so to enter. Said officers shall establish such other regulations and conditions for entering public drains as they deem expedient. *Ibid.*, S. 13.

Permit, Violation; Penalty.—If any person wilfully or negligently violates any condition or regulation prescribed in his permit, said officers may forthwith disconnect his drain from the public drain and declare his permit forfeited; and such person, his heirs and assigns, shall not be allowed to enter it again without a new permit. *Ibid.*, S. 17.

The owner of land is liable for the expense of removing a nuisance therefrom, although a tenant for a term of years caused the nuisance and continued to be the occupant of the premises under his lease when the nuisance was removed.—*Bangor v. Rowe*, 57 Me. 438.

Proceedings Recorded.—All proceedings of municipal officers as aforesaid shall be at their legal meetings. A suitable record shall be made of all such permits, exhibiting the persons and lands to which they apply. Said officers have exclusive direction, on behalf of their town, of all prosecutions under this chapter. *Ibid.*, S. 19.

Ditches and Drains Constructed.—The municipal officers of a town may, at the expense of the town, construct ditches and drains to carry water away from any highway or road therein, and over or through any lands of persons or corporations when they deem it necessary for public convenience or for the proper care of such highway or road; *provided*, that no such drain or ditch shall pass under or within twenty feet of any dwelling-house without the consent of the owner thereof. Such ditches or drains shall be under the control of said municipal officers. C. 21, S. 26.

Before land is so taken notice shall be given and damages assessed and paid therefor as is provided for the location of town ways. *Ibid.*, S. 27.

Railroad Right of Way.— Whenever a public drain or sewer is located and about to be constructed, which crosses the right of way of any railroad, unless the municipal officers or committee of the city or town which located it shall agree with the corporation operating such railroad as to the place, manner and conditions of the crossing, the railroad commissioners, upon petition of either party, after notice and hearing, shall determine the place, manner and conditions of such crossing. P. L. 1903, C. 138.

Elections.— The selectmen issue the warrants for, and preside at, all elections. Except where voting and counting machines are used, they receive the ballots as they are cast, and, with the assistance of the clerk, they sort, count, and declare the votes, and make up a record of the election in open meeting. Lists of the votes, as made by the clerk, are attested by the selectmen and the clerk, and sealed up in open town meeting. C. 6, S. 34, *et seq.*

The selectmen of the oldest town in the district, when the knowledge is received by them that the seat of a representative has been vacated, or that no election of such representative has taken place, are required to call a special meeting of the electors of said town to fill the vacancy as soon as may be after the receipt of such information, and to notify the selectmen of the other towns accordingly.

The selectmen of the several towns in the district call meetings upon the day so appointed. C. 6, SS. 66, 67.

Whenever the municipal officers by any means have knowledge of the death of a representative elect, or of a vacancy caused in any other way, it is their duty to order a new election.— *Questions by the Governor*, 70 Me. 560.

Conduct of Elections.— The method of conducting elections is, in general, the same as in other states where the Australian system of voting is in use. The ballots are delivered to the voters and their names are checked by the officers of election as they enter the room, and thereafter the election officers do nothing more except to receive the ballots as they are delivered by the voters themselves, unless their assistance is requested by the voters. The system of marking ballots is in brief as follows:

The voter may place a cross within the square above the name of the party group, or ticket, in which case he is deemed to have voted for all the candidates named in the group, or if he desires to vote for any person, or persons, whose name, or names, are not printed as candidates in the group, or ticket, he may erase any name, or names, and under the name, or names, so erased fill in the name, or names, of the candidates of his choice. He may also stick on or over the name, or names, a small strip, or strips, of paper bearing thereon another name, or names, and the names of such candidates, so erased, or covered up, are considered to be erased from the ballot, and the person, or persons, whose names

appear on the strips of paper stuck on the ballot are deemed to be voted for as candidates. The marking is done in a booth or compartment. C. 6, S. 10, *et seq.*

Severe penalties are denounced in the statutes for fraud on the part of the officers of election, and every safeguard known to the system of secret balloting is thrown around the voter in the exercise of his privilege. At elections of town officers, the old method of open voting is still followed.

Polling-districts.— The municipal officers, sixty days before any election, may divide towns of more than four thousand inhabitants into convenient polling-districts which shall contain not less than three hundred voters in each, defining the limits thereof by a writing under their hands to be filed by the town clerk. They shall also prepare check-lists for such polling-districts, in lieu of the check-lists for the entire town. C. 6, S. 20.

Clerks Appointed.— The municipal officers of towns voting in accordance with the provisions of this chapter, shall, biennially, in the month of May appoint as clerks for each polling-place such persons as shall be recommended by the several political party committees of the town, representing the two political parties which at the gubernatorial election next preceding such appointment, cast the greatest number of votes. For each polling-place in towns of more than one thousand inhabitants four clerks, and for every town of less than one thousand inhabitants, two clerks shall be appointed. Said clerks shall equally represent each of the political parties which cast the largest number of votes in the state election next preceding their appointment. *Ibid.*, S. 21.

Voting-Shelves.— It is the duty of the municipal officers, to cause the polling-places in their town to be provided with a sufficient number of voting-shelves and compartments at or in which voters may mark their ballots. Each voting-shelf and compartment has a wooden swing-door so arranged that the voter may be partly hidden from view. The room where the voting takes place is also provided with a guard-rail so as to admit to full view of the persons outside of the guard-rail those who enter and leave each compartment. The number of such voting-shelves and compartments, is fixed at not less than one for every one hundred voters qualified to vote at each polling-place and not less than three in any town. Each voting-shelf and compartment is kept provided with proper supplies and conveniences for marking the ballots. *Ibid.*, S. 22.

Check-Lists.— The selectmen of every town, in the month of August, in every year in which a state election is to be held, prepare an alphabetical list of voters from the list delivered to them by the assessors,

deposit such list in the office of the town clerk, and post a similar list in one or more public places in the town. C. 5, SS. 34-37.

The selectmen in receiving the application of persons claiming the right to vote and deciding thereon are acting in a *quasi-judicial* capacity. They are public officers exercising a discretion in the discharge of a public duty cast upon them by law, and they are not liable while acting in good faith and without motive.—*Sanders v. Gelchell*, 76 Me. 160, cites *Donahoe v. Richards*, 38 Me. 392.

After such lists are deposited with the clerk and posted, the selectmen shall not add thereto nor strike therefrom the name of any person, except in open session on one of the days prescribed by law for receiving evidence of the qualifications of voters; nor shall they strike from the list the name of any person residing in the town, without notice first given to him that his right to vote is questioned, and an opportunity for a hearing on one of such days. But, at any regular session for receiving such evidence, the selectmen shall place on the list of voters the name of every person known by, or proved to, them to be so qualified, whether he applies therefor or not. *Ibid.*, S. 38.

Naturalized Voters.—It is the duty of the selectmen on presentation to them of papers of naturalization, if satisfied of their genuineness, and that the person presenting them is entitled to vote, to approve such papers by a written endorsement thereon, signed by one of them; register in a book kept for that purpose the name of the person, the date of the papers and of their approval, and the name of the court by which they were issued; cause the name of such person to be entered on the list of voters; and continue his name on the successive lists, so long as he continues to reside there and is in other respects qualified to vote. If they are of the opinion that such papers are not genuine or that he is not, for other cause, a voter, they shall not approve them or perform the other acts required. *Ibid.*, S. 39.

Names Added.—The municipal officers act as registrars of voters, and hold sessions for the purpose of registration at stated times, when all persons desiring to be registered may appear before them. In the larger towns, no names may be added to the list of voters on the day of election, except such as were upon the list used at the previous state election and have been inadvertently omitted by the selectmen; and on that day no change shall be made in names, except to correct clerical errors therein. In towns containing less than five hundred voters, the municipal officers are required to be in session on the day of an election to receive and decide on applications for registration, at some convenient place, for so long a time immediately preceding the opening of the polls as they think necessary, and to hear and determine any such application at any time before the polls are closed. *Ibid.*, SS. 40, 41.

They are required to be in session at some convenient time and place to be by them notified in the warrant for calling the meeting in their

town, on the secular day next preceding the annual election in March, or on the morning of the day of election, to hear and decide upon the applications of persons claiming to have their names entered upon the list of voters qualified to vote in the choice of town officers. *Ibid.*, S. 44.

Voting-lists.—The town clerk shall have the list of voters provided for by sections forty-three and forty-four at every town meeting held, for the choice of town officers required by law to be chosen by ballot, and it shall be kept and used as a check-list at the polls by said clerk or moderator at such meeting, in the manner prescribed for selectmen or assessors by section 41 of chapter 6, if demanded by one-third of the voters present. C. 5, S. 45.

The requirement that a list of voters shall be kept and used at a meeting is directory only, and its omission will not invalidate the proceedings of a town meeting or exonerate a respondent from the penalty of violating the law.—*State v. Gilman*, 96 Me. 431.

Voting-machines.—Any town may at a legal meeting held not less than ten days before any regular election, determine upon and purchase, or accept for trial, and order the use of, one or more voting and counting machines for the then ensuing election in such town; and thereafter in case such machine, or machines, are purchased, at state and presidential elections, until otherwise voted at a legal meeting, said machines shall be used for the purpose of voting for the officers to be elected at such elections and for taking the vote upon constitutional amendments and all other questions submitted to vote at such elections.

The secretary of state shall make regulations for the use of machines approved, and before each state and presidential election shall furnish appropriate instruction for the voters in towns where such machines are used. C. 6, SS. 46, 48.

Enginemen Discharged.—On proof of negligence, the municipal officers may discharge any engineman or member of the company organized under special laws, and appoint some other person in his stead; and they may select from the enginemen any number for each engine in their town, who shall, under the direction of the fire wards, attend fires therein with axes, fire hooks, fire sails and ladders, and perform such further duty as said officers from time to time prescribe. C. 28, S. 5.

Inspection of Buildings.—The inspector of buildings and the municipal officers of any town may at all reasonable hours, for the purpose of examination enter into and upon all buildings and premises within their jurisdiction. Whenever any of said officers shall find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of such buildings or premises, they shall order the same to be removed or remedied, and such order shall forthwith be complied with by the owner or occupant of said building or premises.

An appeal may be taken from the order of an inspector to the municipal officers, and the cause of complaint shall at once be investigated by their direction. Their order thereon shall be final.

On complaint of any person having an interest in any building, premises or property, the inspector of buildings or municipal officers shall make or cause to be made an immediate investigation as to the presence of combustible materials or the existence of inflammable conditions in or on such building or premises. C. 28, SS. 34, 30.

Fireworks, License.—Whoever sells, or offers for sale, crackers, squibs, rockets or other fireworks in any town, without the license of the municipal officers thereof shall be fined not exceeding ten dollars to the use of the town. C. 129, S. 18.

Flour Inspector.—The municipal officers of towns may appoint annually in their towns one or more suitable persons, not interested in the manufacture and sale of flour, to be inspectors thereof for one year from the date of appointment. C. 39, S. 1.

Forest Fires, Notices.—Selectmen shall erect in a conspicuous place at the side of every highway as they may deem proper, and at suitable distances alongside the rivers and lakes of the state frequented by camping parties, tourists, hunters and fishermen, in their respective towns, notices in large letters to be furnished by the forest commissioner, substantially in the following form: "Camp fires must be totally extinguished before breaking camp, under penalty of not to exceed one month's imprisonment or one hundred dollars fine, or both, as provided by law. ———, Forest Commissioner." C. 7, S. 56.

They shall also post notices relating to forest fires as furnished by the forest commissioner, in school houses, saw mills, logging camps and other places. *Ibid.*, S. 67.

Forest Fire Wardens.—The selectmen of towns are ex-officio forest fire wardens therein, and are required to divide their town into three districts, bounded as far as may be by roads, streams of water, or lot lines, and assign to each of their number the charge and oversight of one district, as district fire wardens therein. It is the duty of the fire warden of the district in which a fire is discovered to take all necessary measures for its control or extinction, and for this purpose he may call upon any persons in his territory for assistance, and such persons shall receive compensation not exceeding fifteen cents an hour as said selectmen may determine, the same to be paid by the town. The aggregate expense for extinguishing forest fires in any year may not exceed two per cent. of the valuation for taxation of the town. *Ibid.*, S. 52.

Reports to Forest Commissioner.—The selectmen of towns in which a forest fire of more than one acre has occurred within a year, shall

report to the forest commissioner the extent of area burned over; to the best of their information together with the probable amount of property destroyed, specifying the value of timber as near as may be and the amount of cord-wood, logs, bark or other forest product, fencing, bridges and buildings that have been burned, and they shall also report the causes of these fires, if they can be ascertained, and the measures employed and found most effective in checking their progress. *Ibid.*, S. 59.

Free High School, Trustees.— In case the trustees of any academy or other corporation formed for educational purposes surrender the whole or any part of the property belonging thereto to the municipal officers of the town in which such academy or corporation is situated for turning the same into a free high school, said municipal officers shall be a board of trustees to take and hold said property for maintaining a free high school, and upon receiving said property they shall use proper diligence to make the same produce income for the support of said free high school. C. 15, S. 72.

Free Public Libraries, State Support.— The municipal officers in any town, where a free public library is established, shall, annually, on the first day of May, certify to the governor and council the amount of money appropriated and expended by said town, during the preceding year, for the purchase of books and documents for the use and benefit of such free public library, and for the payment of the running expenses thereof; and the governor, with the advice and consent of the council, shall draw a warrant on the treasurer of state for the purchase of books for the use of such library, for a sum equal to ten per cent. of the amount expended by said town as certified by its municipal officers. C. 57, S. 14.

Gambling Laws Enforced.— The municipal officers of towns shall enforce promptly the laws against gambling rooms, and make complaint against any person or corporation in their towns when there is probable cause to believe such person or corporation to be guilty of a violation of this section. C. 126, S. 1.

All wagers in this state are unlawful.— *Lewis v. Littlefield*, 15 Me. 237.

One may own and control a house or place resorted to for the purpose of gaming without being the keeper of the house or place in the sense of the law.— *State v. Currier*, 23 Me. 44.

It is not necessary to show that a place is kept for the sole purpose or even the principal purpose of gambling.— *State v. Eaton*, 85 Me. 237.

Gas and Electrical Companies, Land Damages.— An owner of land near to or adjoining a highway or road along which lines shall hereafter be constructed, erected or altered in location or construction by any company, person or association, if said owner's property is any way injuriously affected or lessened in value by such construction, alteration or location of any such line, may within six months after such

construction, alteration or location apply to the selectmen, to assess and appraise the damage. Before entering upon the service, they shall severally be sworn to faithfully and impartially perform the duties required of them by this section. They shall, on view, make a just appraisalment, in writing, of the loss or damage, if any, to the applicant, sign duplicates thereof, and, on demand, deliver one copy to the applicant, and the other to the company or its agent. C. 55, S. 18.

Gas and Electrical Companies, Permits.— No such corporation shall lay its pipes or place its wires under the surface of any road or street, or dig up or open the ground in any road or street, until it shall have obtained a permit in writing from the municipal officers of the city or town in which such road or street is located, which permit shall be signed by such municipal officers, and shall specify the roads and streets and the location therein in which such pipes or wires shall be laid. *Ibid.*, S. 5.

Such corporations are subject to such rules and regulations as to location and construction as such municipal officers may designate in their permit. *Ibid.*, S. 6.

Gifts to Towns, Meetings to Accept.— Whenever the municipal officers of a town are notified in writing by the executors of a will, or by the trustees created by the terms thereof that a devise or bequest in behalf of the town has been made, on conditions contained in the will or by any individual that he intends to make a conditional gift in behalf of said town, the municipal officers of the town shall within sixty days after said notice, call a legal meeting of the inhabitants of said town qualified to vote upon town affairs. The municipal officers shall give notice in their warrants of the objects of said meeting and such other notice as they may deem proper. C. 4, S. 80.

Guideposts.— Towns shall erect and maintain at all crossings of highways, and where one public highway enters another, substantial guideposts not less than eight feet high, and fasten to the upper end of each a board, on which shall be plainly printed, in black letters on white ground, the name of the next town on the route, and of such other place as the municipal officers direct, with the number of miles thereto, and a figure of a hand with the forefinger pointing thereto; and for any neglect herein, towns are subject to indictment, and fine not exceeding fifty dollars. C. 23, S. 91.

The municipal officers are not liable for unreasonably neglecting to cause a guidepost to be erected, when the town has not raised any money for that purpose.— *Studley v. Geyer*, 72 Me. 287.

Harbors, Channels and Anchorages.— The municipal authorities of all maritime towns and plantations may make rules and regulations for keeping open of convenient channels for the passage of vessels in the harbors and waterways of the towns for which they act, and may estab-

lish the boundary lines of such channels, and assign suitable portions of their harbors for anchorages. C. 4, S. 101.

Harbor Masters Appointed.— Selectmen of towns, on request by any person desiring mooring privileges or regulation of mooring privileges for boats or vessels, shall annually appoint a harbor master who shall be subject to all the duties and liabilities of said office as prescribed by law. The selectmen may establish his compensation, and for cause may remove him and appoint another in his stead. *Ibid.*, S. 100.

Health Board Appointed.— There shall be a local board of health in each town in the state, to be composed of three members appointed by the municipal officers; the board first appointed in any town shall be appointed to serve, one for three years, one for two years, and one for one year, and thereafterwards the municipal officers in each town shall annually before the fifteenth day of April, appoint a member of such board to serve three years, and to hold office until another is appointed in his stead. Any vacancy arising from any cause, shall be filled for the unexpired term at the first meeting thereafter, of the municipal officers. If for any reason, the appointments are not made at said date, the same shall be made as soon as may be thereafter. C. 18, SS. 24, 25.

State, Regulations Enforced.— The municipal officers of a town are required to enforce the regulations of the state board of health touching infectious diseases, and to co-operate with that board in carrying out the provisions of the law. *Ibid.*, S. 10.

Health Officer Appointed.— The municipal officers may appoint a health officer, who shall be a well-educated physician and shall be the sanitary adviser and executive officer of the board. He shall hold office during the pleasure of the board. They shall establish his salary or other compensation and shall regulate and audit all fees and charges of persons employed by such board of health in the execution of the health laws and of their regulations. *Ibid.*, S. 28.

Where the municipal officers do not audit the account of a physician employed by the board of health of a town to attend small-pox patients, he is entitled to a reasonable compensation for his services.— *Clement v. Lewiston*, 97 Me. 97.

Illegal Voting.— No selectman shall in any board of selectmen vote on any question in which he is pecuniarily interested, directly or indirectly, and in which his vote is decisive; and no action of such board taken by means of such vote is legal. C. 4, S. 38.

The supreme judicial court, on application of ten or more taxable citizens, may restrain proceedings in any town in violation of the preceding section. *Ibid.*, S. 40.

The locating of a private way by the selectmen of a town is a judicial act requiring disinterestedness on their part. The sons or nephews of a petitioner

for a private way are not disinterested and the location by them of such a way is void.—*Lyon v. Hamor*, 73 Me. 58.

Ill-fame, Houses.—The municipal officers and constables of towns are required promptly to enforce the laws against houses of ill-fame. C. 125, S. 9.

Innholders' Licenses.—The municipal officers, treasurer, and clerk of every town shall meet annually on the first Monday of May, or on the day succeeding, or both, and at such time and place in said town as they appoint, by posting notices in two or more public places therein, at least seven days previously, stating the purpose of the meeting; and at such meeting and at any other time, at a meeting specially called, and notified as aforesaid, they may license under their hands as many persons of good moral character, and under such restrictions and regulations as they deem necessary, to be innholders and victualers in said town, until the day succeeding the first Monday in May of the next year, in such house or other building, as the license specifies. And at any meeting so notified and held, they may revoke licenses so granted, if in their opinion there is sufficient cause; but all such licenses expire on the day aforesaid. C. 29, SS. 1, 3.

No person can lawfully assume to be an innkeeper without first obtaining a license therefor according to the provisions of the statute.—*Lord v. Jones*, 24 Me. 439.

The business of innholding is a privilege and not a natural right, the exercise of which is to be regulated by the legislature for the public convenience and good.—*Dexter v. Blackden*, 93 Me. 473.

Insane Hospitals; Commitments.—Municipal officers are charged with the duty of examining persons alleged to be insane, and, if upon notice to the person complained of and a hearing, they adjudge him to be insane, and that his comfort and safety or that of others interested would be thereby promoted, they are required to send such person to the Maine, or Eastern Maine hospital for the insane. They are required to keep a record of their doings and to furnish a copy upon request of any interested person and payment for it. C. 144, S. 16.

An attested copy of the record of the selectmen of a town made in adjudging a person insane is admissible in evidence in an action to recover the expenses of maintaining such person in a hospital.—*Eastport v. East Machias*, 35 Me. 404; *Eastport v. Belfast*, 40 Me. 264.

The original record is admissible as well as a transcript, or duly authenticated copy of it.—*Jay v. Carthage*, 48 Me. 356.

A complaint made by a relative of an insane person is sufficient if such person be designated as the wife of the complainant without giving her name.—*Bowdoinham v. Phippsburg*, 63 Me. 500.

In a case where the insane person is at the time legally confined in jail upon criminal process, justices of the peace have no jurisdiction to remove him to the hospital.—*Gray v. Houlton*, *Ibid.* 566.

It is sufficient if the complaint be served upon any one of the municipal officers.—*Gray v. Houlton*, 65 Me. 521.

An insane person committed to the hospital by a town and her expenses while there being paid by friends and not by the town, was not "so sup-

ported" by the town as to have any effect upon her pauper settlement.—*Dexter v. Sangerville*, 70 Me. 445.

The expenses incurred by a town in committing a pauper to the insane hospital and supporting him there cannot be recovered of the town where he has his legal settlement, when there is no proof that the selectmen in making the commitment had before them the evidence and certificate of at least two respectable physicians as required by statute.—*Naples v. Raymond*, 72 Me. 216.

In an action against physicians for certifying falsely as to the sanity of a person committed by selectmen to the insane hospital on their evidence and certificate, *held* that if the evidence and certificate is not sufficient to justify a commitment, the municipal officers should not commit, and if they do, it is their fault.—*Pennell v. Cummings*, 75 Me. 167.

The record of the proceedings will be held valid although extended nearly two years after the commitment, it appearing that it was made during the municipal year immediately succeeding the commitment and by the clerk who continued to hold his office by re-election.—*Bangor v. Orneville*, 90 Me. 218.

To maintain an action for the recovery of the husband's expenses, paid by a town for the support of his wife in the insane hospital, plaintiff must show that in the commitment to the hospital the requirements of the statute were fully complied with.—*Kittery v. Dixon*, 96 Me. 371.

Discharge from.— A friend, person, or town, liable for the support of a patient who has been in either hospital for six months, not committed by order of the supreme judicial court nor afflicted with homicidal insanity, thinking that he is unreasonably detained, may apply to the municipal officers of the town where the insane resides, and they shall inquire into the case, and summon before them any proper testimony, and their decision and order shall be binding on the parties. *Ibid.*, S. 26.

Insane Persons, Guardians Appointed.— The judge of probate may appoint guardians of insane persons, spendthrifts and convicts in certain cases, upon written application of the municipal officers of the town where they reside. C. 69, SS. 4, 5.

Held, that as the jurisdiction of the judge regularly attached, by a proper representation and complaint, and he notified the party to be affected, the letter of guardianship was evidence that the guardians were duly appointed.—*Raymond v. Wyman*, 18 Me. 386.

A guardianship for the cause of the judge regularly attached, by a proper representation and complaint, and he notified the party to be affected, the letter of guardianship was evidence that the guardians were duly appointed.—*Raymond v. Wyman*, 18 Me. 386.

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A judge of probate by removal of a guardian on his own petition, removed from his ward the previous disability imposed by the appointment of the guardian.—*Hovey v. Harmon*, 49 Me. 273.

To place a citizen under guardianship, the records must show, by distinct allegation and not by implication or inference, that he falls within one of the classes named in the statute.—*Overseers of Fairfield v. Gullifer*, 49 Me. 361.

When municipal officers are petitioners, if they have given fourteen days' notice to the person by serving him with a copy of their application, the judge may adjudicate thereon without further inquisition, or may order such notice, if any, as he thinks reasonable.—*Young v. Young*, 87 Me. 50.

A decree of a probate court adjudging a person to be of unsound mind and appointing a guardian *held* void for lack of statutory notice and an inquisition.—*Winslow v. Troy*, 97 Me. 134.

Intelligence Offices, Licenses.— The municipal officers of any town may, on payment of five dollars each into the town treasury, grant

licenses to suitable persons for one year, unless sooner revoked after notice and for cause, to keep offices for the purpose of obtaining employment for domestics, servants or other laborers, except seamen, or of giving information relating thereto, or of doing the usual business of intelligence offices. C. 37, S. 6.

Intoxicating Liquors.— The manufacture and sale of intoxicating liquors, except for medicinal and mechanical purposes and the arts, are forever forbidden by an amendment to the state constitution adopted in 1884.

Laws enacted, under the exceptions named, permit the selectmen of any town annually, on the first Monday in May, to buy such quantity of liquors as is necessary to be sold, and to appoint some suitable person, who shall not be one of the municipal officers of the town, to sell the same, at some convenient place therein, for medicinal, mechanical and manufacturing purposes and no other. Such agent receives such compensation for his services, and is required to conform to such regulations, not inconsistent with law, as the appointing body prescribes, and holds his office for one year unless sooner removed by that body or their successors.

The agent has no interest in the liquors sold, or the profits arising therefrom, and is required to give bond with approved sureties in the sum of six hundred dollars.

He is forbidden to sell liquors to any minor without the written direction of his parent, master, or guardian, to any Indian, soldier, drunkard, intoxicated person, any person who is insane, or of unsound mind, or to spendthrifts or convicts, as being liable to guardianship, or to any intemperate person after notice from his relatives, or the selectmen or assessors of any city, town, or plantation. C. 29, SS. 26-28; C. 69, S. 4.

The statute of 1853 for the suppression of drinking houses upheld.— *Gray v. Kimball*, 42 Me. 299.

A sale of liquors to the selectmen as agents of the town was a sale to the town. If the specific power to purchase liquors was not given to the agent or some other particular person, the selectmen were the general agents to act for the town in giving effect to the law.— *Kidder v. Knox*, 48 Me. 551.

A sale was made in Boston by plaintiffs, who were not licensed to sell by the laws of Massachusetts, to the selectmen of a town in Maine; it was held that an action could not be maintained in this state for the price of the liquors, notwithstanding the town was by the statutes of this state authorized to purchase.— *Dudley v. Buckfield*, 51 Me. 254.

A liquor agent is not a town officer but an employee of the town. His employment ceases if not renewed at the end of the year.— *State v. Weeks*, 67 Me. 60.

Liquors purchased by municipal officers without authority and in contravention of the statute are liable to seizure and forfeiture and the officers so purchasing to indictment.— *State v. Belfast, Claimant*, 68 Me. 187.

Intoxicating Liquors; Enforce the Law.— The selectmen, assessors and constables in every town shall make complaint and prosecute all violations of this chapter and promptly enforce the laws against drinking

houses, under penalty for neglect of a fine of not less than twenty nor more than fifty dollars. C. 29, S. 65.

The provision of the statute that proof of delivery without proof of payment is sufficient evidence of sale, upheld as constitutional.—*State v. Hurley*, 54 Me. 562.

A sale of liquors by a servant in the shop of his master is *prima facie* a sale by the master.—*State v. Wentworth*, 65 Me. 234.

The signature of the prosecuting officer is not essential to the validity of an indictment.—*State v. Reed*, 67 Me. 129.

After verdict it is too late to complain of duplicity in an indictment, or complaint and warrant.—*Dolan v. Hurley*, 69 Me. 573.

A warrant for search and seizure, served by a constable legally authorized to serve such process, but to whom no direction was given may be amended at any time, to supply such omission, before final judgment.—*State v. Hall*, 78 Me. 37.

A complaint may be made on affirmation by one conscientiously objecting to taking an oath; but the magistrate should certify not only that the complainant was "conscientiously scrupulous of taking an oath," but that he formally affirmed under the pains and penalties of perjury.—*State v. Welch*, 79 Me. 99.

An indictment for a single sale of intoxicating liquors which alleges that the defendant at a certain term of the court was convicted "of selling a quantity of intoxicating liquors," is a sufficient averment of former conviction.—*State v. Wyman*, 80 Me. 117.

A form of allegation of a former conviction held insufficient.—*State v. Bartley*, 92 Me. 423.

Jurors, Lists How Prepared.—The municipal officers, treasurer, and clerk of each town, constitute a board for preparing lists of jurors to be laid before the town for their approval; and the town, in legal town meeting, by a majority of the voters assembled, may strike out such names as they think proper from such lists, but shall not insert any others.

Such board, at least once in every three years, shall prepare a list of persons, under the age of seventy years, qualified to serve as jurors; and in preparing such list they shall take the names of such persons only as are of good moral character, of approved integrity, of sound judgment and well informed, and qualified as the constitution directs to vote for representatives in such town. When a new list is made, the municipal officers shall transfer from the old to the new tickets of the same persons, the minutes of the draft made within the three preceding years.

After the list of jurors is approved by the town, the board shall write their names upon tickets, and place them in the jury box, to be kept by the town clerk; and the persons whose names are in the box are liable to be drawn and to serve on any jury, at any court for which they are drawn, once in every three years and not oftener, except as herein provided. C. 108, SS. 1, 2, 4.

A justice of a town court is not exempt from serving as a juror.—*Page v. Lewis*, 26 Me. 360.

Exemption is not a disqualification but a personal privilege of the person exempted which he may waive, and if he does so, parties have no ground of complaint.—*State v. Day*, 79 Me. 127, and cases cited.

Penalties for Neglect or Fraud.—If the municipal officers or town clerk neglect to perform their duties, so that the jurors called for from their town are not returned, they shall be fined not less than ten nor more than fifty dollars each.

Any town clerk or municipal officer who commits a fraud on the box previous to the draft, or in any other mode, shall be fined not exceeding two hundred dollars. *Ibid.*, SS. 16, 20.

Leather Inspectors, Appointed.—The municipal officers of each town, when they deem it expedient, may appoint one or more suitable inspectors of sole leather, who shall receive such fees from their employers as said officers establish. C. 40, S. 15.

Lighters, Marker Appointed.—The municipal officers of every town where boats and lighters are employed in carrying stones, sand, or gravel, shall annually, in April or May, appoint some suitable person, who shall be sworn, to examine and ascertain the capacities of all such boats and lighters, and mark them as prescribed in section eighteen; and said officers shall establish and regulate the fees therefor. C. 38, S. 20.

Liquor Agent, Action on Bond.—When any person authorized to sell intoxicating liquors shall violate the provisions of section forty, he shall be punished as provided in section forty-one and shall also be liable to suit upon his bond, and the selectmen of the town to which such bond is given shall cause such suit to be prosecuted to judgment and satisfaction in behalf of the town. C. 29., S. 30.

Logs, Surveyors Appointed.—The municipal officers of a town may, if they deem it necessary, appoint not exceeding seven surveyors of logs. C. 42, S. 14.

Milk Inspectors Appointed.—The municipal officers of towns containing not less than three thousand inhabitants shall annually appoint, and the municipal officers of all other towns shall on application of ten voters therein, annually appoint one or more persons to be inspectors of milk, who shall, before entering upon their duties, give notice of their appointment by publishing the same for two weeks in a newspaper published in their towns, if any, otherwise by posting such notice in two or more public places therein, and may receive such fees as said officers establish. C. 39, S. 9.

Mobs, Suppression.—Each of the municipal officers is required to go among any persons, to the number of twelve or more, assembled for unlawful or riotous purposes, in the town, or as near to them as he can safely go, and command them in the name of the state immediately and peaceably to disperse. If they do not obey, he is authorized to command the assistance of all persons present to arrest and secure the persons so

unlawfully assembled. In such a case, any two such officers may require the aid of a sufficient number of persons in arms, and may proceed as they judge expedient to suppress the riotous assembly and arrest and secure the persons composing it.

If in the efforts made to suppress a riotous assemblage any persons composing it who refuse to disperse, or any persons present, are killed or wounded, the officers and persons acting with them or by their order, shall be held guiltless and justified in law. C. 124, SS. 11-13.

Nuisances, Offensive Trades, Places Designated.— The municipal officers of a town, when they judge it necessary, may assign places therein for the exercise of any trades, employments, or manufactures aforesaid, and may forbid their exercise in other places, under penalty of being deemed public or common nuisances and the liability to be dealt with as such. All such assignments shall be entered in the records of the town, and may be revoked when said officers judge proper. C. 22, S. 7.

It is no defense to an indictment for exercising a noxious trade in a public locality, that the town authorities have omitted to assign any place for the exercise of such trade.—*State v. Hart*, 34 Me. 40.

When the act done or the thing complained of is only a nuisance by reason of its location and not in and for itself, the court will not order the destruction of what constitutes the nuisance, but will require its removal or cause its use, so far as such use is a nuisance, to cease.—*Brightman v. Bristol*, 65 Me. 435.

Towns and cities are required by law to keep their roads and streets so that they shall be safe and convenient for travelers. Whatever their legal duty requires of them in that regard, they are bound by law to do and cannot bind themselves to do more.—*Penley v. Auburn*, 85 Me. 281.

Officers Appointed.— If after the choice of any officer not required to be chosen by ballot, there is a vacancy in any such office, the municipal officers may fill such vacancies by the written appointment of proper persons, who shall be summoned by the constable to appear and take the oath of office provided in section twenty-five subject to the penalties provided in section twenty-six. Such appointment and oath shall be recorded as in case of a choice by the town. No person shall be so appointed without his consent. C. 4, S. 15.

Pawnbrokers, Licenses.— The municipal officers of any town may grant licenses to persons of good moral character to be pawnbrokers therein for one year, unless sooner removed by said officers for violation of law. C. 37, S. 1.

Petroleum, Etc., Examination; Inspectors.— The municipal officers of towns may at all times examine all such oils and fluids kept in their town for sale, and cause them to be inspected and tested; and they shall do so in all cases where they are informed or believe that the same are kept for sale in violation of law, and cause the keeper and seller to be prosecuted therefor. C. 40, S. 12.

In towns containing two thousand inhabitants or more, the municipal officers, on or before the first day of May annually, shall appoint one or more persons and fix their compensation, to be inspectors of petroleum, coal oil, and burning fluid. *Ibid.*, S. 9.

Police Officers Appointed.—The selectmen of towns may appoint and shall control and fix the compensation of police officers. Such appointment shall be in writing, signed by a majority of the selectmen and recorded by the town clerk, and shall be for such time not exceeding one year as the selectmen shall determine. C. 4, S. 94.

Portwardens Elected.—Portwardens shall be elected by a board of trade duly incorporated, if any, in the town; otherwise, the municipal officers thereof shall annually elect them.

They may be removed for cause and vacancies shall be filled by said authorities. C. 38, SS. 24, 25.

Public Exhibitions, Licenses.—The municipal officers of towns may grant licenses for any exhibitions of images, pageantry, sleight-of-hand tricks, puppet show, circus, feats of balancing, wire dancing, personal agility, dexterity, or theatrical performances therein, on receiving for their town such sum as they deem proper; twenty-four hours being allowed for each exhibition or performance. C. 31, SS. 1, 2.

Railroads, Public Ways Crossing.—Town ways and highways may be laid out across, over or under any railroad track, in the same manner as other town ways and highways, except that before such way shall be constructed, the railroad commissioners, on application of the municipal officers of the town wherein such way is located, or of the parties owning or operating the railroad, shall, upon notice and hearing, determine whether the way shall be permitted to cross such track at grade therewith or not, and the manner and conditions of crossing the same, and the expense of building and maintaining so much thereof as is within the limits of such railroad shall be borne by such railroad company, or by the town in which such way is located, or shall be apportioned between such company and town, as may be determined by said railroad commissioners. C. 23, S. 29.

In estimating damages for land of a railroad corporation taken by a town in locating town ways across its track, the jury may consider the use the corporation makes and will make in the near future of the same. Damages are not recoverable by a railroad company against a town in such a case for the interference and inconvenience, nor for increased risks or expense in running its trains caused thereby.—*P. and R. Railroad Co. v. Deering*, 78 Me. 61; nor for expenses in defending itself against claims for accidents at such crossing. Police power defined.—*R. R. Co. v. Co. Commissioners*, 79 Me. 387.

Railroad commissioners have no jurisdiction to regulate the crossing of railroad tracks and public ways unless the former are laid under charter authority, so as to be maintained in the exercise of eminent domain, and become a railroad for public use.—*In re Railroad Commissioners*, 83 Me. 277.

Where a railroad had included a culvert under a street within its location, and the duty of maintaining both street and culvert had passed from the city

to the railroad, which built it and had ever since maintained it, it was *held* that the city was not liable for damages caused by an insufficiency in the culvert.—*Lander v. Bath*, 85 Me. 142.

Railroad commissioners have jurisdiction of railroad crossings in unincorporated places.—*In re Railroad Commissioners*, 87 Me. 247.

Railroad commissioners alone have authority to locate a piece of highway to connect a crossing with an existing highway.—*Me. Cent. R. R. v. Street Ry.*, 89 Me. 561.

The location of a highway along and over a prescriptive way extinguishes the easement of the public in the latter, and the abandonment of the highway does not revive the public easement in the prescriptive way.—*In re Railroad Commissioners*, 91 Me. 137.

A railroad company that succeeded to the rights and franchises of another, assumes the burden of maintaining a culvert built by the other to give passage to the waters of a brook beneath its road.—*Penley v. Me. Cent. Railroad Company*, 92 Me. 59.

A prescriptive right to cross a railroad track by virtue of an adverse public use cannot be acquired under the laws of Maine.—*Bangor v. Railroad Co.*, 97 Me. 163.

Railroad Crossings Regulated; Gates.—Bridges and their abutments, constructed for a crossing of any way, shall be kept in repair by the corporation, or by persons or parties running trains on any railroad crossing a highway or town way. The municipal officers of any town may give notice in writing to such persons, parties or corporations, that a bridge required at such crossing has not been erected, or is out of repair, and not safe and convenient, within the requirements of section fifty-six of chapter twenty-three, or that the crossing of any such highway or town way passing such railroad at grade, within their respective towns, is not made or maintained safe and convenient, as required by said section; and such persons, parties or corporations, shall erect or repair such bridge, or make such crossing safe and convenient, as aforesaid, within ten days from the service of said notice; and if they neglect so to do, any one of said municipal officers may apply to any justice of the supreme judicial court, in term time or vacation, to compel such delinquents to erect or repair such bridge, or make such crossing, as aforesaid; and after hearing, such justice or court may make any order thereon which the public convenience and safety require, and may, by injunctions compel the respondents to comply therewith; or said officers may, after ten days from the service of such notice, cause necessary repairs to be made, and the expense thereof shall be paid by the persons, parties or corporations whose duty it is to keep such crossing safe and convenient. C. 51, S. 68.

When the municipal officers of a town deem it necessary for public safety, that gates should be erected across a way where it is crossed by a railroad, and that a person should be appointed to open and close them, they may make such request in writing; and in case of neglect or refusal they may apply to the railroad commissioners to decide upon the reasonableness of such request, who after notice and hearing, shall decide. When they decide that such a request is reasonable, or that

at said crossing a flag-man or automatic signals are necessary for the public safety, they may, upon said application, order a flag-man to be stationed or automatic signals to be maintained there instead of gates, and the corporation shall comply with such order and pay the costs; when they decide otherwise, the costs shall be paid by the applicants. *Ibid.*, S. 71.

A petition to the county commissioners for gates at railroad crossings is not an "action" within the meaning of R. S., c. 1, § 5. An act of the legislature, P. L. 1893, c. 205, transferring the jurisdiction of the matter from the county commissioners to the railroad commissioners annulled all proceedings pending before the former tribunal.—*Railway v. Co. Commissioners*, 88 Me. 227.

All crossings of highways by railroads fall within the jurisdiction of the railroad commissioners.—*Me. Cent. R. R. v. Street Railway*, 89 Me. 555.

Railroad Stock Voted.—When a town holds stock in a railroad, the municipal officers thereof or an agent appointed by them in writing may vote thereon at any meeting of the corporation. *Ibid.*, S. 45.

Road Commissioner Appointed; Accounts.—If a person elected as road commissioner fails to qualify before the first Monday of April, the office shall be deemed vacant, and shall be filled by the selectmen by appointment; and in the event of a vacancy caused by death or otherwise, the selectmen shall appoint some competent person to fill out the unexpired term, who shall qualify and perform the duties of said office. If a town fails to elect a road commissioner at its annual meeting, the money raised and assessed for the repair of bridges and ways as provided by section seventy of chapter twenty-three, shall be expended for that purpose by the selectmen. C. 4, S. 15.

When a town has surveyors of highways duly appointed by the municipal officers, the selectmen cannot bind the town by a contract to pay for labor on the highways either in money or by allowance upon the highway tax.—*Tufts v. Lexington*, 72 Me. 517.

In case no road commissioner is elected by a town at its annual meeting, the selectmen shall keep accurate accounts showing in detail all moneys paid out by them for the repair of bridges and ways, to whom and for what purpose, and the same shall be reported in the annual report in detail. C. 23, S. 73.

Road, Law of; Automobiles.—Municipal officers of any town may designate places on any streets or ways therein, where, in their judgment, by reason of cliffs, embankments, or other exceptional natural conditions, the meeting of automobiles or motor vehicles and horses would be attended with unusual danger. Such designation shall be made by causing the words "automobiles—go slow," to be conspicuously displayed on sign boards at the right hand side of each approach to the place to be designated, and not more than one hundred and fifty feet therefrom. C. 24, S. 11.

Salt and Grain Measurers Appointed.—The municipal officers of towns annually may appoint measurers of salt, corn and grain therein, who shall receive such fees from the purchaser as said officers establish. C. 39, S. 38.

Schools, Annual Returns.—The assessors or municipal officers of each town, shall, on or before the first day of each May, make to the state superintendent of public schools, a certificate, under oath, embracing the following items:

I. The amount voted by the town for common schools at the preceding annual meeting.

II. The amount of school moneys payable to the town from the state treasury during the year ending with the first day of the preceding April.

III. The amount of money actually expended for common schools during the last school year.

IV. The amount of school moneys unexpended.

V. Answers to such other inquiries as are presented to secure a full and complete statement of school revenues and expenditures. C. 15, S. 28.

Schoolhouses, Appraisal of Lot.—In case, by reason of an error, the location of a schoolhouse lot is invalid, the selectmen, upon application of three taxpayers of the town, may notify the owner of the lot, hold a hearing, and upon such hearing appraise such lot and affix a fair value thereon. C. 15, SS. 5, 6.

Soldiers and Sailors, or Widows, Burial.—The municipal officers of the town in which any person who served in the army, navy, or marine corps of the United States, during the war of 1861, or during the war with Spain, and was honorably discharged therefrom, shall die, being at the time of his death a resident of this state, or the widow of any such soldier or sailor, in destitute circumstances, having no kindred of sufficient ability, resident in this state, legally liable for her burial expenses, shall pay the expenses of his, or her, burial; and if he or she die in an unincorporated place, the town charged with the support of paupers in such unincorporated place, shall pay such expenses, and upon satisfactory proof by such town to the governor and council of the fact of such death and payment, the governor shall authorize the state treasurer to refund to said town the amount so paid. C. 4, S. 66.

The statute does not require that the burial shall be provided, or that the expenses thereof shall be authorized by the municipal officers; it is their duty to pay the expenses from the funds of the town and upon their refusal to pay them, an action will lie in assumpsit against the town for their recovery.—*Rackliff v. Greenbush*, 93 Me. 100.

Skating-rinks, Licenses.—Every person who keeps a roller skating-rink or room, shall obtain a license from the municipal officers of the

town where such rink is located and shall pay therefor such sum as said municipal officers may deem proper. C. 31, SS. 9, 10.

State Roads Established; Returns.—Upon the request of the municipal officers of any town, the county commissioners of the county wherein the town is located, shall designate that highway running through said town which in their judgment is the main thoroughfare, and said highway shall be known as a state road.

Municipal officers of towns improving state roads under the foregoing provisions shall annually before the first day of October make return, under oath, to the county commissioners of their county of the amount appropriated and expended by their town in such permanent improvements, the amount of road improved, and the character of the work done. C. 23, SS. 99, 101.

Stationary or Gas Engine, License.—No stationary, gasoline or steam engine shall be erected in a town until the municipal officers have granted license therefor, designating the place where the buildings therefor shall be erected, the materials and mode of construction, the size of the boiler and furnace, and such provision as to height of chimney or flues, and protection against fire and explosion, as they judge proper for the safety of the neighborhood. Such license shall be granted on written application, recorded in the town records, and a certified copy of it furnished, without charge, to the applicant.

Any such engine erected without a license shall be deemed a common nuisance without other proof than its use.

Said officers have the same authority to abate and remove an engine, erected without license, as is given to the local board of health, or health officer in chapter eighteen. C. 22, SS. 18, 20, 21.

An engine is not *per se* a nuisance. It may become one when it endangers the safety of a neighborhood. The remedy of the party aggrieved is by indictment, not by the summary destruction of the engine.—*Brightman v. Bristol*, 65 Me. 435.

In an action to recover damages for burning property caused by the use of a stationary steam engine which was erected and used without a license, it was held that the remedy was at common law and not under the statute.—*Burbank v. Bethel Steam Mill Co.*, 75 Me. 373.

Steam Riding-galleries, Licenses.—Any person intending to operate or run a merry-go-round, or steam riding-gallery, in any town, shall first procure a license therefor from the municipal officers of such town, who may grant such license if they see fit, upon payment therefor of a sum not exceeding fifty dollars. C. 31, S. 11.

Street Railroads, Location.—Every street railroad corporation organized under the provisions of this chapter, before commencing the construction of its road, shall make written application to the municipal officers of the town in which it seeks a location for approval of a route

and location by it desired, and if the municipal officers neglect for thirty days after such application to approve such route and location as to streets, roads or ways, or if such route and location approved by them is not accepted by the corporation, in either case, said corporation may appeal to the next term of the supreme judicial court to be held in any county where any part of said railroad is located.

The authority to determine whether a street railroad may cross public bridges already erected, shall rest with the municipal officers of the towns liable for the repair of such bridges, who may impose such conditions and terms upon such railroads as to them may seem expedient. C. 53, S. 7.

The railroad commissioners are to determine the question as to whether public convenience requires the construction of a street railroad for public use before they indorse their approval upon the articles of association. An appeal lies from their determination of that question to the supreme judicial court.—*Railroad Co., Appellants*, 94 Me. 568.

A route or location cannot be considered with reference to particular streets, one by one, but must be viewed as a whole. The municipal officers are vested with a judicial discretion. They may consider the width and other conditions of the streets, the convenience and safety of the public and where it is proposed to cross a bridge, whether the bridge has sufficient strength to support a street railroad and moving cars.—*Electric R. R., Appellants*, 95 Me. 362.

The public has a mere easement in land taken and condemned for a highway or town way. The operation of a street railroad is an appropriate public use of a street. When the legislature authorizes a new method of use of the public easement in a way, a town has no such property interest in the way as will entitle it to pecuniary compensation, nor has any injury been done to it of which it can properly complain.—*Electric R. R. Co., Appellants*, 96 Me. 115.

Location Canceled.— Whenever a location for a street railroad upon any street, road, or way has been approved under the general law or any special act, with no actual occupation thereof by the rails of such company, such location in whole or in part may be canceled at any time by the municipal officers of the town where so located upon the petition of the directors of the corporation entitled to the same. *Ibid.*, S. 15.

Mode of Construction.— Street railroads shall be constructed and maintained in such form and manner, and with such rails, and upon such grade as the municipal officers of the towns where the same are located may direct, and whenever in the judgment of such corporation it shall be necessary to alter the grade of any town or county road, said alterations shall be made at the sole expense of said corporation with the assent and in accordance with the directions of said municipal officers.

The said corporation may at any time appeal from the decision of such municipal officers determining the form and manner of the construction and maintenance of its railroad and the kind of rail to be used, to the board of railroad commissioners who shall upon notice hear

the parties and finally determine the questions raised by said appeal. C. 53, S. 19.

Regulations.— The municipal officers of any town may at all times make all such regulations as to the mode of use of tracks of any street railroad, the rate of speed and the removal and disposal of snow and ice from the streets, roads and ways, by any street railroad corporation, as the public safety and convenience may require.

Any street railroad corporation may appeal from the decision of such municipal officers making any regulation under this section to the board of railroad commissioners, who shall upon notice hear the parties and finally determine the questions raised by such appeal. *Ibid.*, S. 25.

Turnouts, Additional.— When the location of any street railroad shall have been approved as provided by law, the municipal officers may approve such additional locations for turnouts and spurs to property used or to be used by said corporation in the operation of its road as shall be necessary therefor, such additional locations shall not be deemed to be extensions, additions or variations with the meaning of this chapter. *Ibid.*, S. 9.

Winter Service Discontinued.— Upon a written application by any street railroad corporation, to the municipal officers of any city or town, and hearing thereon, the municipal officers may authorize said corporation to discontinue the running of its cars, during such portion of the winter months, and upon such terms and conditions as they may determine; said corporation may appeal from such decision to the board of railroad commissioners, who shall after reasonable notice and hearing, make such determination thereon as shall be reasonable and proper, and their decision shall be final. *Ibid.*, S. 30.

Taxes, Estate Sold Bid Off for the Town.— The municipal officers may employ one of their own number or some other person to attend the sale for taxes of any real estate in which their town is interested and bid therefor a sum sufficient to pay the amount due and charges, in behalf of the town, and the deed shall be made to it. C. 10, S. 85.

A tax assessed against one deceased is void and creates no lien or obligation to pay. It is as if there never had been any attempt at assessment.— *Morrill v. Lovett*, 95 Me. 170.

Town Agent.— A town agent is elected annually at the annual town meeting. He acts under the direction of the selectmen, and receives from the town treasury such compensation for his services as may be fixed by vote of the town; otherwise as the selectmen shall allow. C. 4, SS. 12, 14.

Town Clerk, Vacancy Filled.— In case of the town clerk's absence, death, resignation, or removal from office, without having appointed a

deputy, the municipal officers may appoint, in writing, a citizen to fill said office, who shall perform all the duties of the clerk during his absence, or in case of his death, resignation, or removal from office, until a clerk is elected. C. 4, S. 18.

Town Lines, Perambulation.— Lines between towns shall be run once every five years, except as mentioned in the two following sections. The municipal officers of the oldest town shall give ten days' notice in writing to such officers of the adjoining towns of the time and place of meeting for perambulation; and the proceedings of such officers, after every such renewal of boundaries, shall be recorded in their town books.

Towns, which, since March twenty-two, eighteen hundred and twenty-eight, have perambulated, or shall perambulate their lines as by law prescribed, and set up stone monuments, at least two feet high, at all the angles, and where the lines cross highways, or on or near the banks of all rivers, bays, lakes, or ponds, which said lines cross, or which bound said lines, are exempt from the duty of perambulating said lines, except once every ten years, commencing ten years from the time that the stone monuments were so erected.

When a town petitions the supreme judicial court, stating that a controversy exists between it and an adjoining town respecting a town line, and praying that it may be run, the court, after due notice to all parties concerned, may appoint three commissioners, who shall, after giving notice of the time and place of meeting, to all persons interested, ascertain and determine the lines in dispute, and describe them by courses and distances, and make, set, and mention in their return, suitable monuments and marks for the permanent establishment thereof, and make duplicate returns of their proceedings; one of which shall be returned to the court, and the other to the office of the secretary of state; and such lines shall be deemed in every court and for every purpose the dividing lines between such towns.

The court may allow the commissioners a proper compensation for their services, and issue a warrant of distress for its collection from said towns in equal proportions. *Ibid.*, SS. 108-111.

If the report of the commissioners does not ascertain and determine the line, the controversy is not terminated, and other commissioners may be appointed on a new petition.— *Lisbon v. Bowdoin*, 53 Me. 324.

The assessors of organized plantations are subject to the performance of the duties devolving on municipal officers of towns in relation to perambulation.— *Small v. Lufkin*, 56 Me. 30.

Where the two *termini* of a line between towns are established, and no intermediate conflicting point is indicated in the description, the line will be deemed to be a straight one.— *Bremen v. Bristol*, 66 Me. 354.

When the act of incorporation makes a running stream of fresh water a boundary of a town, in the absence of language showing a different intention, the thread of the stream and not the bank is the boundary line.— *Perkins v. Oxford*, 66 Me. 546.

The center line down the channel of the stream is the boundary line, when the channel is named as the boundary.—*Warren v. Thomaston*, 75 Me. 332.

Town lines are public matters to be fixed by the legislature alone, either directly or in that way which it provides. There must be three commissioners.—*Monmouth v. Leeds*, 76 Me. 28.

The decision of commissioners in ascertaining, determining, and marking upon the face of the earth the common line between towns is conclusive.—*Bethel v. Albany*, 65 Me. 201; *Winthrop v. Readfield*, 90 Me. 235.

It is not necessary that the commissioners should be sworn.—*Winthrop v. Readfield*, 90 Me. 235.

Town Meetings Called.— Every town meeting is called by a warrant signed by the selectmen. When by reason of death, removal or resignation, a majority of the selectmen do not remain in office, a majority of those remaining may call a town meeting.

The first town meeting is called and notified in the manner prescribed in the act of incorporation, and if no mode is therein prescribed, by any justice of the peace in the same county. When a town once organized is destitute of officers, a meeting may be called on application to such justice for his warrant for the purpose, made in writing by any three inhabitants thereof.

If the selectmen unreasonably refuse to call a town meeting, any ten or more legal voters therein may apply to a justice of the peace in the county, who may issue his warrant for calling such meeting. When ten or more voters in writing request the selectmen to insert a particular thing in a warrant, they shall insert it in the next warrant issued, or shall call a special meeting for the consideration thereof. C. 4, SS. 2-4.

If a majority of the selectmen were never requested to call the meeting, it cannot be said they unreasonably refused.—*Southard v. Bradford*, 53 Me. 391.

A town by-law or ordinance requiring a notice of three months of a town meeting is unreasonable and for that reason unauthorized and void.—*Jones v. Sanford*, 66 Me. 591.

Town Meetings, Biennial.— The selectmen of every town, by their warrant shall cause the inhabitants thereof, qualified according to the constitution, to be notified and warned seven days at least before the second Monday of September, biennially, to meet at some suitable place designated in said warrant to give in their votes for governor, senators, and representatives, as the constitution requires; and such meeting shall be warned like other town meetings.

No such meeting shall be opened before ten o'clock in the forenoon on the day of election, unless the number of voters in such town exceeds five hundred; if it does, an earlier and suitable time in the day may be appointed by the selectmen. At all elections for choice of state officers and of electors of president and vice-president of the United States, in towns and plantations having more than five hundred and less than five thousand inhabitants, if the time is not otherwise fixed by law, the polls shall be kept open until five o'clock in the afternoon and then be closed.

The selectmen or other officers, required by the constitution and laws to preside at any such meeting, shall have all the powers of moderators of town meetings, as provided in chapter four; and they shall refuse the vote of any person not qualified to vote.

If a majority of the selectmen are absent from any such meeting duly warned, or being present, neglect or refuse to act as such and to do all their duties, the voters may choose so many selectmen *pro tempore*, as are necessary to constitute or to complete the number competent to act.

During the choice of selectmen *pro tempore* any selectman present may act as moderator; if no selectmen are present, or if those present neglect or refuse to act as such, the town clerk shall preside; and the person so presiding shall have all the powers and discharge the duties of moderator.

Selectmen *pro tempore* accepting the trust, shall be sworn faithfully to discharge the duties of said office, so far as relates to such meeting and election; and in making a record and return of the votes, as the constitution or laws require, and in all matters incidental to the trust, they shall have the powers of permanent selectmen, and be subject to the same duties and liabilities. C. 6, SS. 34-39.

In case of the death or the removal of all the selectmen, two would be sufficient and competent to act. If the other selectmen had deceased prior to the meeting, the survivors might act and their action would be legal.—*Questions by Gov. Garcelon*, 70 Me. 565.

Perform Duties of Clerk.—During the election of a moderator, in the absence of the town clerk, either of the selectmen may do all the duties of the clerk in receiving and counting the votes for moderator. C. 4, S. 16.

Town Treasurer Appointed.—In case of death, resignation, removal or other permanent disability of a treasurer of a town or plantation, the municipal officers may appoint a citizen thereof to be treasurer until his successor is elected and qualified. Such appointment shall be in writing and be recorded.

Before such appointee enters upon his official duties he shall be sworn, and give bond to the town for the faithful performance thereof in such sum and with such sureties as the municipal officers order. *Ibid.*, SS. 23, 24.

Tree Planting Authorized.—A sum not exceeding five per cent of the amount raised for repairs of ways and bridges may be expended by a road commissioner under the direction of the municipal officers, in planting trees about burying-grounds, squares and ways, if the town by vote authorizes it. C. 23, S. 64.

Vacancies; Officers Appointed.—The moderator, town clerk, selectmen, assessors and overseers of the poor, treasurer, auditor, school com-

mittee, town agent and road commissioners shall be elected by ballot, and the other said officers by ballot, or if not so elected, they shall be appointed by the selectmen. C. 4, S. 14.

Vinegar Inspectors Appointed.— The selectmen of towns may annually appoint one or more persons to be inspectors of vinegar, for their towns and may fix their compensation. C. 129, S. 17.

Water-course, Construction.— No road commissioner without written permission from the municipal officers, shall cause a water-course to be so constructed by the side of a way as to incommode any person's house or other building, or to obstruct any one in the prosecution of his business. C. 23, S. 67.

A surveyor of highways has no authority to subject to a public easement any land not lying within the lines of the road, such as to make a ditch by the roadside through adjoining improved lands for the purpose of turning the water away from the highway.— *Plummer v. Sturtevant*, 32 Me. 328.

One who receives an injury by stepping on planking placed over a gutter within the located limits of a public street, but not within the wrought portion thereof, is not a traveler on said street so as to entitle him to recover for the injury from the town.— *Philbrick v. Pittston*, 63 Me. 477.

If the highway surveyor in making necessary repairs on a highway by cleaning out an old ditch causes the surface water to flow upon adjacent land more freely than it did formerly, no action will lie against the town for the damage occasioned thereby.— *Gardiner v. Camden*, 86 Me. 380.

By this statute the municipal officers are made agents of the town and may do the work authorized thereby at the town's expense.— *Getchell v. Oakland*, 89 Me. 427.

Ways, Monuments Preserved.— The municipal officers shall maintain all highway monuments and replace them forthwith when destroyed. *Ibid.*, S. 11.

Damages for Raising or Lowering.— When a way or street is raised or lowered by a road commissioner or person authorized, to the injury of an owner of land adjoining, he may, within a year, apply in writing to the municipal officers, and they shall view such way or street and assess the damages, if any have been occasioned thereby, to be paid by the town. *Ibid.*, S. 68.

Where an existing street or road is dug down to the injury of the owner of the adjoining land, it is not an alteration within the meaning of the statute which will entitle him to damages.— *Hovey v. Mayor*, 43 Me. 322.

The owner referred to in the statute is the owner of the land at the time of the injury.— *Sargent v. Machias*, 65 Me. 591.

A street railroad company, acting under the authority of the city council, may change the grade of a street, and commits no trespass against the owner of abutting land.— *Briggs v. Horse R. R. Co.*, 79 Me. 368.

In a case on appeal under the statute, it was held that the cost of improvements and changes necessary to restore the premises to a proper condition in relation to the new grade is admissible as evidence affecting the question of benefit to the property, but not as a substantive cause of damage.— *Chase v. Portland*, 86 Me. 369.

Discontinued.— A town, at a meeting called by warrant containing an article for the purpose, may discontinue a town or private way; and

the municipal officers shall estimate the damages suffered by any person thereby. *Ibid.*, S. 19.

An unrestricted vote to discontinue a town way takes effect from its passage, though the meeting at which it is passed may be adjourned to a subsequent day.—*Bigelow v. Hillman*, 37 Me. 52.

A town way which had its origin and continuance by virtue of a legal location may be discontinued, although used for more than twenty years.—*Larry v. Lunt*, *Ibid.* 69.

No previous action of the selectmen is requisite to make the vote of the town discontinuing a way effectual.—*State v. Brewer*, 45 Me. 606.

A discontinuance of a public way by both branches of the city government, the board of aldermen and common council, of Augusta, is legal, although there was no determination as to damages and no previous action taken upon that subject.—*Hicks v. Ward*, 69 Me. 436.

The statute relates to such ways only as towns may lay out, alter or widen, and not to those created by express grant in a deed.—*Tibbetts v. Penley*, 83 Me. 118.

Information to State Commissioner.—Town officers having the care of and authority over public ways and bridges throughout the state shall on request, furnish the state commissioner of highways any information which they may possess and required by him, concerning ways and bridges within their jurisdiction. P. L. 1905, C. 146.

Laying Out.—The municipal officers of a town may, on petition therefor, personally or by agency, lay out, alter, or widen town ways and private ways, for any inhabitant, or for owners of cultivated land therein. They shall give written notice of their intentions, to be posted for seven days, in two public places in the town and in the vicinity of the way, describing it in such notice, and they shall determine whether it shall be a town way or a private way; and if a private way, whether it shall be subject to gates and bars.

They may lay out a way as aforesaid for the hauling of merchandise, hay, wood, or lumber, to be used only when the ground is so covered with snow that such hauling shall not break the soil. When so laid out, they shall state in their return the purposes for which it is laid, and that it shall be used only in the winter season, and shall order the persons for whose accommodation it is laid, to pay into the town treasury an amount equal to the damages and expenses of such location for the benefit of the owner of the land over which it is laid, and it shall not be accepted by the town until such amount is so paid. No town shall be liable for damage to any person traveling on such way. C. 23, SS. 16, 17.

A town is not liable in any form for the defect of a road, unless by regular legal proceedings, or by user and acquiescence for twenty years, or a shorter time, it has acquired the right to enter upon land and make and repair the road. Such user and acquiescence may be considered as sufficient to give the town a right, and subject it to liability to repair and its legal consequences.—*Todd v. Rome*, 2 Me. 55.

It is necessary to the legality of a town way, that due notice be previously given by the selectmen to all persons interested in the location—that they make a return of their doings under their hands, to the town, and that it be accepted and allowed by the town at a legal meeting called for that purpose.

Where a town way has been opened, publicly used and acquiesced in, the legal presumption is, that the owners of the land were duly notified of its location.—*Harlow v. Pike*, 3 Me. 438.

The court of sessions has no original jurisdiction in the laying out of town or private ways, its jurisdiction is of an appellate character merely; and confined to two specified cases, *i. e.*, (1) where selectmen shall unreasonably delay or refuse to lay such a way, or (2) the town shall unreasonably delay or, refuse to approve the same.—*State v. Pownal*, 10 Me. 24.

The act of locating should precede the issuing of a warrant, calling a meeting of the inhabitants to act upon the subject.—*Howard v. Hutchinson*, *Ibid.* 335.

What is reasonable notice to the owner of the land over which the selectmen propose to lay out a road depends on the circumstances. Where the owners were trustees of an academy and a majority lived in the town where the road was to be laid out, seven days' notice was held enough.—*Trustees of Belfast Academy v. Salmond*, 11 Me. 109.

The adjudication of the court of sessions that the town unreasonably refused to lay out a way is final and conclusive.—*Goodwin v. Hallowell*, 12 Me. 275.

Notice of the intended location given to either the mortgagor or mortgagee in the actual possession of the land is enough.—*Cool v. Crommet*, 13 Me. 250.

The selectmen are not required to state in their report to the town that the way will be beneficial to the town or to some one or more of its inhabitants.—*Limerick, Petitioner*, 18 Me. 183.

The return of proceedings of the selectmen in laying out a way to be valid must state whether the way is a town way or a private way.

County commissioners have power to approve and allow a town way as laid out by the selectmen leading from one town road to another and passing through land of the applicant, if the town unreasonably refuse or delay to approve thereof.—*North Berwick v. County Comrs.*, 25 Me. 69.

A conditional acceptance of a town or private way by a town is void.—*Christ's Church v. Woodward*, 26 Me. 172.

A judgment of county commissioners in a matter within their jurisdiction is in force until reversed, although there are omissions and informalities in the recitals of their records as to the preliminary proceedings.—*Plummer v. Waterville*, 32 Me. 568.

Publication in a newspaper in a neighborhood held due notice to a land-owner. A notice posted at the town house is sufficient.—*State v. Beeman*, 35 Me. 242.

It must appear in the selectmen's return of their doings that notices were posted up in the vicinity of the proposed route.—*Goodwin v. Cloudman*, 43 Me. 576.

A road may be established by user and the rights of the public will be according to user. Where a road had been incumbered for forty years with movable bars or gates, the right to use the road still existed subject to such limitation.—*Hinks v. Hinks*, 46 Me. 423.

The selectmen may lay out a way for inhabitants of the town from whatever place in the town it leads; but they can lay out a way for persons not inhabitants of the town only when the petitioners are owners of cultivated land in the town, and the way leads from such land to a town or highway.—*Orrington v. County Comrs.*, 51 Me. 571.

The city charter of Portland gives the city council exclusive authority, through a committee, to lay out, alter or discontinue any and all streets in the city without petition therefor. A notice duly published reciting a petition and designating time and place where the committee would meet parties interested is sufficient.—*Jones v. Portland*, 57 Me. 42.

The town way is not established until accepted in a town meeting legally called afterwards and by a warrant containing an article for the purpose.—*Williams' Petition*, 59 Me. 518.

A town way and a highway are not substantially the same thing within

the meaning of R. S., c. 18, § 39. Highways or county ways lead from one town to another. Town ways are within the territorial limits of a particular town.—*Waterford v. County Comrs.*, 59 Me. 450.

Failure to give notice prior to an assessment of the damages for laying out and altering a way does not invalidate the action of the city council in establishing the way; it only affects the assessment of damages.—*Cassidy v. Bangor*, 61 Me. 434.

A town way may be laid out on the petition of an inhabitant whether he is an owner or occupier of land or not; but a private way can only be laid out either for residents who occupy or non-residents who own cultivated land which such way will connect with a town or county road.—*Hall v. County Comrs.*, 62 Me. 325. See also *True v. Freeman*, 64 Me. 573.

The statute does not require the names of the owners of the land which the way is to cross to be inserted in the notice.—*Fernald v. Palmer*, 83 Me. 250.

Where the necessary jurisdictional facts can be inferred from the record of county commissioners, their judgment, having been acquiesced in for years, cannot be successfully attacked in a collateral proceeding.—*Higgins v. Hamor*, 88 Me. 32.

Failure by a committee to return the names of owners of land taken and damages awarded is not an essential prerequisite to the validity of the location of a way.—*Wilson v. Simmons*, 89 Me. 251.

Where land was not described nor its owner's name mentioned in a taking of lands for a public way, the land was not taken.—*Littlefield v. Rockland*, 91 Me. 449.

Lay-out, Return.—A written return of their proceedings containing the bounds and admeasurements of the way, and the damages allowed to each person for land taken, shall be made and filed with the town clerk in all cases. The way is not established until it has been accepted in a town meeting legally called after the return has been filed, by a warrant containing an article for the purpose. C. 23, S. 18.

If the return of the selectmen state that the way laid out is a town road, it will be sufficient, though it does not state for whose benefit it is laid out. A vote of the town prior to the laying out of a road by the selectmen, that the owners of the land over which the location of the road was contemplated might permit their fences to remain for one year, could have no legal operation whatever.—*Mann v. Marston*, 12 Me. 32.

The proceedings were held valid in a case where the record showed that the road was laid out by a majority of the selectmen, at a meeting held at a particular time and place, pursuant to a notice in a public newspaper published in the same town.—*Goodwin v. Hallowell*, *Ibid.* 271.

It is not necessary that the return of the selectmen of their doings in locating a way should be recorded before it is offered to the town for acceptance.—*Cool v. Crommet*, 13 Me. 250.

A statement in the record of proceedings that notice was given by the selectmen before they proceeded to act is *prima facie* evidence of the fact.—*Limerick, Petitioner*, 18 Me. 183.

The return must be made out and signed by a majority of the selectmen, but they may depute to one of their number or to any other person the actual location by running out the road and marking and setting up monuments.—*Crommet v. Pearson*, *Ibid.* 344.

The return of the selectmen governs in determining the bounds of the way laid out by them.—*Dennett v. Hopkinson*, 18 Me. 343.

Where the return states that stone monuments had been set up and marked at the angles of the road, and also gives courses and distances, and there is a disagreement between them and the monuments, the courses and distances may be corrected by the monuments named in the return.—*Woodman v. Somerset*, 25 Me. 300.

A town cannot be adjudged to have delayed or refused to approve and allow a supposed way, where there had been no proper return or report of the laying of such way by the selectmen.—*Lewiston v. County Commissioners*, 30 Me. 19.

The proceedings of county commissioners allowing a town way will be void, unless the petition on which they act shows that the laying out of the way with the boundaries and admeasurements was reported to the town.—*Gulford v. County Commissioners*, 40 Me. 296.

Acceptance by the city council of the report of a committee (appointed by them) locating or altering a street is a sufficient compliance with the law.—*Preble v. Portland*, 45 Me. 241.

Where the lot is laid out for a school district, the town has no interest in it, and the proper place to record the return of the laying out is on the district records.—*Cousens v. School District*, 67 Me. 286.

Lines Between Towns.—When a way is established on a line between towns, their municipal officers shall divide it crosswise, and assign to each town its proportion thereof by metes and bounds, which, within one year thereafter, being accepted by each town, at a legal meeting, shall render each town liable, in the same manner as if the way were wholly within the town; when a division of it is not so made, the selectmen of either town may petition the county commissioners, who shall give notice to the parties; and after hearing them may make such division. C. 23, S. 60.

County commissioners may make a division between the towns but are not required by law to do it.—*Detroit v. County Commissioners*, 52 Me. 214.

Where no crosswise division of a road has been made, each town is liable for defects occurring within its limits and is bound to repair them. Neither town can be held for defects arising from neglect of the other.—*State v. Thomaston & R.*, 74 Me. 202.

Location Vacated.—When land has been plotted and a plan thereof made, whether recorded or not, showing the proposed location of streets thereon, and lots have been sold by reference to said plan, the municipal officers of the town where such land is situated may on petition of owners of the fee in such of said proposed streets as are named in the petition, vacate in whole or in part the proposed location of any or all such streets as have not been accepted and located as public ways. The proceedings shall be the same as in the case of the location of town ways. *Ibid.*, S. 27.

Mail Routes and Snow.—There shall be furnished and kept in repair in each section of the town, through which there is a mail route, some effectual apparatus for opening ways obstructed by snow, to be used to break and keep open the way to the width of ten feet, and the municipal officers of towns, or any road commissioner under their direction, may take down fences upon the line of public highways when they deem it necessary to prevent the drifting of snow therein; but they shall in due season be replaced, in as good condition as when taken down, without expense to the owner. *Ibid.*, S. 63.

Repairs; Excavations Near.— Persons desiring to make an excavation near a street or public way, may make written application to the municipal officers setting forth its nature and extent, and requesting their direction thereon; such officers shall in writing direct whether it may or not be made, and if permitted, the manner of making it; and when so made, no liability is incurred thereby. *Ibid.*, S. 93.

A verdict and judgment in an action by a city for damages occasioned by a defect in one of its highways is conclusive evidence of the existence of the defect, the injury to the victim while in the exercise of due care, and the amount of the injury. A private person who creates a nuisance in making an excavation in a public highway is responsible for injuries arising therefrom during its continuance.— *Portland v. Richardson*, 54 Me. 47.

A city is not liable to a traveler who falls into an excavation situated outside the limits of a public street, in a vacant lot, where he voluntarily went to see a circus.— *Morgan v. Hallonwell*, 57 Me. 377.

Weights and Measures, Sealer Appointed.— The municipal officers of each town shall annually appoint a sealer of weights and measures therein, removable at pleasure, and may fill vacancies; for each month's neglect of this duty they severally forfeit ten dollars. C. 44, S. 5.

A weigher's book is not admissible in evidence which contains only the weight of the articles in question, in a case where the weigher is dead and it does not appear that he had been duly appointed and sworn, and that the scales used had been sealed according to law.— *Washington Ice Co. v. Webster*, 68 Me. 470.

Wharves and Fisheries; Licenses.— The municipal officers of a town upon application of any person intending to build or extend any wharf or fish weir in tide waters, within the limits of the town, may, after examination and a hearing of all parties interested, if satisfied that such erection or extension would not be an obstruction to navigation, or an injury to the rights of others, shall issue a license under their hands to the applicant, authorizing him to make said erection or extension, and to maintain the same within the limits mentioned in such licenses. C. 4, S. 96.

In any river or tide water lying between two towns or cities no such wharf or fish weir shall be erected without the consent of the municipal officers of both; and in no case shall any wharf be extended beyond any wharf lines heretofore legally established. *Ibid.*, S. 97.

A special act of the legislature granting a special license to one to erect a weir in certain tide waters was not defeated or modified by a later general act giving to all others the same right under certain conditions precedent.— *State v. Cleland*, 68 Me. 259.

"Below low-water mark" does not necessarily mean that the soil in which the offending weir is erected shall be under water at all stages of the tide; it may become subject to the penalty if erected on public flats situated beyond or nearer the middle of the channel than the low-water line of the private flats intended to be protected.— *Donnell v. Jay*, 85 Me. 120.

Fish Weirs, License.— The application and petition with the notice and proceedings thereon and the license granted, for a wharf or fish

weir in tide waters within the limits of any town shall be recorded in said town. C. 4, S. 98.

SUPERINTENDING SCHOOL COMMITTEE.

See "Schools."

Surveyors of Lumber, Etc.; Election; Duties.—All towns elect at their annual meetings one or more surveyors of boards, plank, timber and joist; one or more surveyors of shingles, clapboards, staves and hoops; and every town containing a port of delivery, whence staves and hoops are usually exported, elects two or more viewers and cullers of staves and hoops; and the municipal officers of any town, if they deem it necessary may appoint not exceeding seven surveyors of logs. C. 42, S. 14.

No person shall deliver on sale, or ship, or attempt to ship for exportation, any boards, plank, timber, joists, shingles, clapboards, staves or hoops before they have been surveyed, measured, viewed, or culled, as the case may be, and branded by the proper officer, and a certificate thereof be given by him, specifying the number, quality and quantity thereof, under a penalty of two dollars per thousand. *Ibid.*, S. 21.

The services of these officers are at the command of any purchaser of the articles mentioned, upon payment of their fees; and certificates of quantity issued by them are binding upon both buyer and seller. *Ibid.*, *passim*.

TOWN AGENT.

A town agent for the sale of intoxicating liquors is chosen annually at the annual town meeting. He may likewise be appointed by the selectmen. C. 4, SS. 1, 14; C. 29, S. 26.

See also "Selectmen."

TOWN CLERK.

Election; Official Oath.—The town clerk is chosen annually by ballot and major vote at the annual town meeting. C. 4, SS. 12, 14.

The town clerk, before entering on the duties of his office, shall be sworn before the moderator, or a justice of the peace, truly to record all votes passed in that and other town meetings during the ensuing year and until another clerk is chosen and sworn in his stead, and faithfully to discharge all the other duties of his office. *Ibid.*, S. 17.

Vacancy, How Filled.—In case of a vacancy in the office of town clerk, the municipal officers may appoint a citizen to fill the office and perform the duties until a clerk is elected. *Ibid.*, SS. 18, 28.

Deputy Clerk, Appointment; Duties.—The clerk of any town may appoint, in writing, a citizen thereof his deputy, who may, in the clerk's

absence, perform all the duties of said office with the same effect as if done by the clerk; the appointment may be made in writing.

In case of the clerk's absence, death, resignation or removal from office, without having made such appointment, the municipal officers may appoint, in writing, a citizen to fill said office, who shall perform all the duties of the clerk during his absence, or in case of his death, resignation or removal from office, until a clerk is elected.

Said deputy, or person appointed by the municipal officers, shall be sworn faithfully to perform the duties of his office before he enters thereon.

The clerk may also appoint a woman, otherwise qualified by the constitution, who in his absence may so far act as deputy clerk as to receive and record chattel mortgages and other papers, and make certified copies of the records in the clerk's office. *Ibid.*, S. 18.

Returns from towns or cities not attested by the town or city clerk are not valid. If, however, the clerk be absent a clerk *pro tempore* may be chosen or a deputy clerk appointed, and returns by such clerk or deputy have the same force and effect as if signed by the clerk.—*Opinion of Justices*, 70 Me. 564.

Attachment of Bulky Property.—When any personal property is attached which by reason of its bulk or other special cause cannot be immediately removed, the officer may within five days thereafter, file in the office of the clerk of the town in which the attachment is made, an attested copy of so much of his return on the writ, as relates to the attachment. The clerk shall receive the copy, noting thereon the time, enter it in a suitable book, and keep it on file for the inspection of those interested therein. C. 83, S. 27.

An attachment was lost by failure of the officer to file the requisite certificate with the town clerk.—*Wetherell v. Hughes*, 45 Me. 62; *Woodman v. Trafton*, 7 Greenl. 178; *Gower v. Stevens*, 19 Me. 94; *Shaw v. Wilshire*, 65 Me. 491.

By filing a copy of the return and certificate with the town clerk the officer does not deprive himself of the right to regain actual possession of the property attached, whenever necessary to its preservation.—*Wentworth v. Sawyer*, 76 Me. 434.

An attachment recorded in the clerk's office of a plantation was properly recorded. The word "town" in a statute includes cities or plantations, unless otherwise expressed or implied.—*Parker v. Williams*, 77 Me. 422.

The validity of an attachment is not affected by anything done by the clerk or by his negligence in recording it.—*Lewiston St. Mill Co. v. Foss*, 81 Me. 601; *Monahan v. Longfellow*, *Ibid.* 302.

A vessel at sea cannot be effectively attached.—*Bradstreet v. Ingalls*, 84 Me. 276.

In the case of a building standing on leased land and regarded as personal property it was *held* that it did not fall within the purview of this statute, and that the attaching officer was justified in having the owner of the building in charge of it as keeper.—*Laughlin v. Reed*, 89 Me. 235.

An attachment recorded in a town which nowhere adjoins the township in which the property is situated is not preserved.—*Grant v. Albee*, 89 Me. 299.

Squaw island, being west of the center line of the Penobscot river, a certificate of attachment on that island should be filed in Argyle, within whose

territorial limits it is situated, and not in Greenbush, the oldest adjoining town.—*Stevens v. Thatcher*, 91 Me. 70.

The requirements of the statute are met by filing the attachment for record with the clerk of an apparently organized plantation. The officer need not inquire into the validity of the organization of the plantation.—*Cookson v. Parker*, 93 Me. 493.

Collector's Bond.—A collector's bond shall after its approval and acceptance, be recorded by the clerk in the town records, and such record shall be *prima facie* evidence of the contents of such bond; but a failure to so record shall be no defense in any action upon such bond. C. 10, S. 15.

Common Lands, Records.—After a final division of their common property, the proprietors shall cause their records to be deposited in the office of the clerk of the town in which some part of such land lies; and he may record votes and certify copies of such records as the proprietors' clerk might have done. C. 58, S. 12.

The neglect of the clerk to deposit the records with the town clerk after the proprietary ceases to exist, as required by law, does not affect the validity of previous proceedings of the proprietary.—*Bracket v. Persons Unknown*, 53 Me. 233.

Conditional Sales, Record.—No agreement that personal property bargained and delivered to another shall remain the property of the seller till paid for, is valid unless the same is in writing and signed by the party to be bound thereby; and in whatever form it may be, it shall not be valid except between the parties thereto, unless it is recorded in the office of the clerk of the town in which the purchaser resides at the time of the purchase. C. 113, S. 5.

A contract made in Vermont is not affected by the law of this state as to record here.—*Drew v. Smith*, 59 Me. 393.

Where one sold a wagon and received in part payment cash, and later a note in ordinary form for the residue, it was *held* that he had no longer any title to the wagon.—*Boynton v. Libby*, 62 Me. 254.

If the parties intend that an instrument shall operate as a mortgage, it comes within the purview of the statute requiring such mortgages to be recorded, however imperfect it may be in form.—*Shay v. Wilshire*, 65 Me. 491.

A person who had cut lumber under a permit gave a negotiable note in payment. The creditor gave a receipt running as follows: "Settled by note of A. K. Hellier, with Joseph Penny, 2d and D. W. Davis sureties payable in three months at bank in Bangor, I retaining my lien on lumber as provided in permit." *Held*, that the note did not discharge the lien.—*Crosby v. Redman*, 70 Me. 59.

An order for an iron safe containing a promise to pay for it a certain sum on a fixed date, with the addition: "The same remaining the property of the sellers till payment." *Held*, that this was not a note for the payment of the safe within the meaning of the statute, and the safe remained the property of the sellers till paid for.—*Morris v. Lynde*, 73 Me. 88.

A note given in payment for a horse containing an agreement that the horse should remain the payee's until fully paid for, should have been recorded under the statute.—*Nichols v. Ruggles*, 76 Me. 26.

An agreement for the sale of a wagon, in payment for which several notes are given, aggregating more than thirty dollars, the wagon to remain the property of the payee until the notes are paid, is not valid unless made and

signed as part of the notes, and recorded as a mortgage, although each note may be less than thirty dollars.—*Field v. Gellerson*, 80 Me. 273.

An instrument specifying that the maker should have a horse upon payment of certain sums by certain dates, and that the payees should hold the horse till paid for was *held* to be a note with an agreement that the property bargained for and delivered should remain the property of the payee until the note is paid, and is not valid except between the parties unless recorded like mortgages of personal property.—*Cunningham v. Trevett*, 82 Me. 145.

Where notes were given in payment for machinery and a sealed writing at the same time containing the condition that the property should remain in the payees until the notes were paid, it was *held* that as this condition was not made a part of the notes, the deed was void, the property was sold to the purchasers on credit, and the title passed to them.—*Holt v. Knowlton*, 86 Me. 456.

Prior to c. 32 Stat. 1895, an agreement for a conditional sale of personal property, no note having been given nor any express promise of payment made, was not required to be recorded to give it validity as against others than the original parties.—*Hopkins v. Maxwell*, 91 Me. 247.

An agreement in writing, in order to constitute or include a note under the statute, must contain either expressly or by necessary implication a promise to pay the price stipulated in the writing.—*Campbell v. Atherton*, 92 Me. 70.

NOTE.—The statute of 1895, c. 32, enlarges the scope of the law to include "lease, conditional sale, purchase on instalments, or by any other name and in whatever form it may be."

The assignee under a common-law assignment for the benefit of creditors is not within the purview of the statute as amended by Stat. 1895, c. 32. He occupies no better position than his assignor did.—*Rowell v. Lewis*, 95 Me. 83.

A corporation "resides" in the town where it has established its place of business, and is required to record a contract of sale in order to retain its lien under the statute, at that place.—*Emerson Co. v. Proctor*, 97 Me. 360.

Dog Licenses; Records.—Town clerks have authority to issue licenses to owners and keepers of dogs, upon the payment to them of the fees required by law. Such licenses are issued by the clerk as of the first day of April in each year and continue for one year. Owners or keepers of dogs kept for breeding purposes may receive annually a special kennel license, authorizing them to keep such dogs for that purpose, provided they are kept within the proper enclosure. Such dogs are exempt from the provisions of the law requiring registration, numbering or collaring. C. 4, S. 45.

The fees received by the clerk for such licenses are paid over to the town treasurer within thirty days, the clerk retaining a small fee for his services. He is required to keep a record of all licenses issued by him, with the names of the owners or keepers of the dogs licensed, and the sex, registered number and description of such dogs; *provided*, however, that the sex, registered number and description need not be recorded of dogs covered by a kennel license. *Ibid.*, S. 46.

An unlicensed dog may not be killed as a public nuisance by a private person who does not suffer damages therefrom peculiar to himself and distinct from the injury to the public.—*Chapman v. Decrow*, 93 Me. 378.

Elections.—The duty of preparing the ballots for all state and national elections is devolved upon the secretary of state who transmits

them to the clerks in each city, town and plantation in which such elections are to be held, in season for their distribution to the polling-places where they are to be used. The clerks make the distribution, keeping a record of the ballots distributed by them. The ballots are sent in packages, carefully sealed, and suitably marked, so as to designate the polling-place for which they are intended, and the number and kind of ballots inclosed. They return receipts for the packages to the secretary of state.

The secretary of state also furnishes, with the other ballots, specimen ballots and cards of instruction, which are also distributed among the polling-places, with the ballots, by the clerk of the town to which they are sent. The clerks also have charge of the check-lists which are used at elections, and are required to preserve those used at the September elections for one year, without alteration, and to furnish to any person a certified copy of the same, upon a tender of legal charges. They are also required to transmit by mail, or cause to be delivered to the secretary of state, the returns from all elections, and a statement of the number of votes cast at such elections in their towns. C. 6, SS. 14-54.

Flour Inspectors.—An inspector of flour before entering on his duties shall be sworn to the faithful and impartial discharge thereof before the town clerk, who upon payment of fifty cents, shall give him a certificate of his appointment and qualification. C. 39, S. 2.

Innholders' Licenses.—The municipal officers, treasurer and clerk of every town have power to license annually suitable persons as innholders. The clerk makes a record of all licenses granted. C. 29, SS. 1-4.

See "Selectmen."

Innholders' Liens; Record of Sales.—All sales made by innholders of goods and personal baggage of guests and boarders, shall be recorded in the office of the town clerk where the sales take place, in a suitable book open to public inspection. C. 93, S. 65.

Jurors, Board for Preparing List.—The municipal officers, treasurer and clerk of each town, constitute a board for preparing lists of jurors to be laid before the town for their approval. C. 108, S. 1.

See also "Selectmen."

Meetings for Drawing.—Notice of a meeting for the drawing of jurors shall be delivered to the town clerk, who shall carry the jury-box into the meeting. The box shall there be unlocked, and the tickets mixed by a majority of the officers present; one of them shall draw out as many tickets as there are jurors required. *Ibid.*, SS. 9, 11.

The four days' notice may include Sunday.—*State v. Wheeler*, 64 Me. 533.

A venire issued after the expiration of the time named in the statute, but in season for service by the proper officer, in accordance with the provisions of the statute, is valid.—*State v. Smith*, 67 Me. 335.

Lost Goods and Stray Beasts.— The town clerk receives notices of the finding of lost goods and the taking up of estrays, and upon request of the finders of such goods, and of those who take up such estrays, he shall issue a warrant directed to two disinterested persons to be appointed by him to appraise such goods or estrays under oath. C. 100, SS. 10, 11, 12.

Marriage.— Residents of the state intending to be joined in marriage are required to cause notice of their intentions to be recorded in the office of the clerk of the town in which each resides; and if one only of the parties resides in the state, he shall cause notice of such intentions to be recorded in the office of the clerk of the town in which he resides, at least five days before a certificate is granted.

The book in which such record is made shall be kept open to public inspection in the office of the clerk; and, if there is no such clerk in the place of their residence, a like entry shall be made with the clerk of an adjoining town. C. 61, S. 4.

Certificate.— The clerk shall deliver to the parties a certificate specifying the time when such intentions were entered with him; but no such certificate shall be issued to a male under twenty-one, or to a female under eighteen years of age, without the written consent of their parents or guardians first presented, if they have any living in the state; nor to a town pauper when the overseers of such town deposit a list of their paupers with the clerk. *Ibid.*, S. 5.

Any person believing that parties are about to contract marriage when either of them cannot lawfully do so, may file a caution and the reasons therefor in the office of the clerk where the notice of their intentions should be filed. Then if either party apply to enter such notice, the clerk shall withhold the certificate until a decision is made by two justices of the peace, approving the marriage after due notice to, and hearing, all concerned. He shall deliver or withhold the certificate in accordance with the final decision of said justices. *Ibid.*, S. 8.

A marriage is valid without any certificate of intention being obtained, as required by law, when solemnized by a duly authorized magistrate.—*Gardner v. Manchester*, 88 Me. 249.

Certificate Filed.— When residents of this state go into another state for the purpose of marriage, and it is there solemnized, and they return to dwell here, they shall file a certificate or declaration of their marriage with the clerk of the town in which each of them then lived. *Ibid.*, S. 7.

Mechanics' Liens.— Liens of mechanics and materialmen are filed in the office of the clerk of the town in which the labor is performed or

materials furnished, and the statement filed is recorded by the clerk in a book kept for that purpose. C. 93, S. 31.

It is a sufficient statement of the lien-claim filed in the clerk's office if it gives the amount due without stating the items making up such amount.—*Ricker v. Joy*, 72 Me. 108; *Westcott v. Bunker*, 83 Me. 499.

A lien once acquired by labor on a building by the consent of the owner should not be defeated by technicalities when no rights of others are infringed and no express command of the statute is disobeyed.—*Durling v. Gould*, 83 Me. 137.

A mechanic's lien is dissolved by failure to file with the town clerk a statement of the amount due him within forty days after he ceases to labor.—*Cole v. Clark*, 85 Me. 336; *Woodruff v. Hovey*, 91 Me. 116.

A lien once lost cannot be revived by additional work.—*Dorrington v. Moore*, 88 Me. 569; *Woodruff v. Hovey*, 91 Me. 116; *Dole v. Auditorium*, 94 Me. 535.

In a case where a material-man furnished a door in exchange for another, also furnished by him, by request of another person than the owner, and filed a statement as required by the statute, it was held that he had preserved his lien.—*Farnham v. Richardson*, 91 Me. 559.

Mortgages of Personal Property.—No mortgage of personal property is valid against any other person than the parties thereto, unless possession of such property is delivered to, and retained by the mortgagee, or the mortgage is recorded by the clerk of the town or plantation organized for any purpose, in which the mortgagor resides, when the mortgage is given. When all the mortgagors reside without the state, the mortgage shall be recorded in the town or plantation, where the property is when the mortgage is made; but if a part of the mortgagors reside in the state, then in the towns or plantations in which such mortgagors reside, when the mortgage is given. A mortgage made by a corporation shall be recorded in the town where it has its established place of business. If any mortgagor resides in an unorganized place the mortgage shall be recorded in the oldest adjoining town or plantation in the county. C. 93, S. 1.

Prior to the late statutes concerning registration thereof, mortgages of movables were inoperative against attaching creditors, unless accompanied by a delivery of the property mortgaged, either actually or symbolically. *Goodenow v. Dunn*, 21 Me. 86.

The time when a mortgage was received by the town clerk must be noted both in the book of records and on the mortgage in order that it should be considered as recorded when left with the clerk.—*Handley v. Howe*, 22 Me. 561.

A mortgage of personal property may be valid, although the property is described therein only as "said store (standing on land of another) and all the goods, wares and merchandise in and about the same." *Wolfe v. Dorr*, 24 Me. 104.

When a valid mortgage of personal property is made and duly recorded, an officer is not authorized to attach the same on *mesne* process as the property of the mortgagor without first paying or tendering the full amount of the debt due secured by the mortgage.—*Smith v. Smith*, *Ibid.* 558.

A mortgage expressed to embrace all the property "now in the shop occupied by me in Bangor," held good, as the goods in the shop at the time of the delivery of the mortgage might be ascertained by testimony.—*Burditt v. Hunt*, 25 Me. 421.

Title does not vest in the mortgaged property until delivery of the deed to the mortgagee or his agent.—*Jewett v. Preston*, 27 Me. 400.

Parol evidence is admissible to prove that at the time of making a mortgage of personal property, the parties agreed that the possession should remain with the mortgagor. Such evidence does not contradict the mortgage.—*Pierce v. Stevens*, 30 Me. 184.

The right to possession of personal property mortgaged is presumed to be in the mortgagee, unless it appears that the mortgagor retained the right.—*Holmes v. Sprowl*, 31 Me. 74.

The statute does not embrace liens. The contract of sale stated that the seller should retain a full and perfect lien on the logs bargained for and on the lumber manufactured therefrom, as collateral security for the notes given in payment for them. Held, that the lien should be sustained.—*Sawyer v. Fisher*, 32 Me. 30.

Parol evidence is not admissible to show that a written mortgage of a chattel was intended to constitute a pledge.—*Whitney v. Lowell*, 33 Me. 319.

A conveyance of chattels, unconditional in form, need not be recorded, although intended merely for security, and the chattels are permitted to remain in possession of the vendor.—*Knight v. Nichols*, 34 Me. 208.

The validity of a mortgage of personal chattels is not impaired because it is recorded upon a book of the town records. A certificate of the town clerk on the back of the mortgage when it was received is evidence of the fact so certified.—*Head v. Goodwin*, 37 Me. 181.

A delivery of personal property for security does not constitute a mortgage thereof.—*Beeman v. Lawton*, *Ibid.* 545.

A note given by two persons as part payment for a mare, containing these words: "Said mare to be holden to J. S. G. (one of the signers) for the amount he may pay for the same," is not a mortgage and need not be recorded.—*Gushee v. Robinson*, 40 Me. 412.

It is not essential to the validity of a mortgage of personal property that a schedule of the goods therein referred to but not made part of it should be recorded.—*Chapin v. Cram*, *Ibid.* 561.

A mortgage dated 29th November, 1854, was by mistake recorded as dated, March 29, 1854. Held, that the defect in the record was fatal.—*Stedman v. Perkins*, 42 Me. 131.

The date of a mortgage is *prima facie* evidence that it was then delivered. The statutes make no distinction between resident and nonresident mortgagees.—*Foster v. Perkins*, *Ibid.* 168.

Moving goods embraced in a mortgage from one store to another does not destroy the lien of the mortgage though it may render it more difficult to identify the property.—*Whielden v. Wilson*, 44 Me. 1.

A mortgage of personal property made by a debtor to secure a creditor, without his knowledge, although recorded, is inoperative until approved or assented to by the creditor.—*Oxnard v. Blake*, 45 Me. 605.

Parol evidence of an erroneous date in a mortgage of personal property not under seal is admissible.—*Partridge v. Swazey*, 46 Me. 414.

A mortgage made to secure an existing debt and to cover future advances is valid.—*Googins v. Gilmore*, 47 Me. 14, cites *Holbrook v. Baker*, 5 Greenl. 309.

A mortgage of personal property need not be under seal.—*Gerrey v. White*, 47 Me. 504.

In the case of a fraudulent mortgage of chattels executed and completed, the record of the mortgage is equivalent to a delivery of the goods, and so far passes the title that the mortgagee may maintain an action against an officer for the value of the goods attached and sold at private sale, though sold with the assent of the mortgagor, in whose possession they were found.—*Andrews v. Marshall*, 48 Me. 26.

Where there are two joint mortgagors of personal property residing in different towns, the record of the mortgage is incomplete until it has been recorded in each of the towns where the mortgagors reside.—*Rich v. Roberts*, 48 Me. 550, 50 Me. 395; *Morrill v. Sanford*, 49 Me. 566.

If a mortgagor removes to another town and takes the mortgaged property

with him, the mortgage, if recorded in the first, need not be recorded in the other town.—*Barrows v. Turner*, 50 Me. 127.

The statute does not apply to property in vessels duly registered or enrolled according to the laws of the United States.—*Wood v. Stockwell*, 55 Me. 76.

A mortgage by a railroad corporation covering "cars, engines and furniture that have been or may be purchased by said company," created a lien upon the rolling stock subsequently acquired which attached as soon as it was purchased and placed upon the railroad by the company.—*Morrill v. Noyes*, 56 Me. 458.

Before a vessel is registered or enrolled a mortgage of it will be valid if recorded agreeably to the laws of the state.—*Perkins v. Emerson*, 59 Me. 319.

If it is the intent of the parties to an instrument that it shall operate as mortgage, it brings the instrument within the purview of the statute, however imperfect it may be in form.—*Shaw v. Wilshire*, 65 Me. 485.

A form of "lease," providing that the lessee should pay a weekly sum for furniture, and when the whole price was paid the lessor would sell the furniture to the lessee, held a conditional sale and not a mortgage to be recorded under the statute.—*Campbell v. Atherton*, 92 Me. 69.

Record.—The clerk shall record all such mortgages delivered to him, in a book kept for that purpose noting therein, and on the mortgage the time when it was received. C. 93, S. 2.

If the mortgage and schedule are left with the clerk, while they remain unrecorded, they are sufficient notice to the public; but when the clerk has made his record, that is the only record the law recognizes.—*Sawyer v. Pennell*, 19 Me. 173.

If a town clerk omits to note the time at which he receives a mortgage of personal property to be registered, the mortgage will, nevertheless, take effect from the time when it was actually recorded.—*Holmes v. Sprowl*, 31 Me. 73.

The certificate of the clerk of the town where the mortgagor resided, of his receipt of the same, upon the back of the mortgage, is sufficient proof that it was left with him at the time stated in the certificate; and there being one date only on the back of the mortgage, the further statement thereon that it was recorded on the town records, it must be understood that it was recorded at the same time.—*Head v. Goodwin*, 37 Me. 186.

Although the time of the reception of a mortgage is not noted upon the records, the title of the mortgagee is protected after it has been actually recorded.—*McLarren v. Thompson*, 40 Me. 284.

The record of a mortgage is sufficient, if over the signature of the clerk of the proper town, the writing shows a substantial compliance with the statute.—*Stevens v. Whittier*, 43 Me. 376.

If a mortgage is withdrawn by a mortgagee or by his order, before it is recorded, it is withdrawn from the record, and the entry made by the clerk is of no avail.—*Jones v. Parker*, 73 Me. 248.

The town clerk is liable to any person injured by his delay in recording a mortgage.—*Monaghan v. Longfellow*, 81 Me. 299.

The time of record must appear of record, and when the record is silent it cannot be shown by evidence *aliunde* the record. The record cannot be amended after the thirty days have expired so as to show that the recording was within thirty days.—*Stafford v. Morse*, 97 Me. 222.

Oaths Administered; Record; Penalty.—Any town officer may be sworn in open town meeting by the town clerk, who shall give to the officer sworn, except when sworn in presence of such clerk, a certificate of the oath administered, which he shall return to such clerk to be filed. In either case the clerk shall record the name of the officer and of his office, by whom sworn, and the time of taking the oath and returning the certificate.

Any town clerk elected to any office and sworn, may record his own election, the fact that he was sworn, and when and by whom. If any clerk fails to record such oath, if returned, within ten days, he forfeits five dollars. C. 4, S. 27.

The provisions of law requiring a record to be made of persons sworn as town officers is directory and does not prevent the fact of their being sworn from being otherwise proved when there is no record thereof made.—*Kellar v. Savage*, 17 Me. 444.

Parol evidence is admissible to prove that the assessors and collector were duly sworn.—*Hathaway v. Addison*, 48 Me. 443, cites *Cottrill v. Myrick*, 12 Me. 222.

The following record held a sufficient compliance with the law, and the fact that the oath was taken established: "Oxford, ss.: March 3, 1862, personally appeared William Woodsum and took the oath necessary to qualify him to discharge the duties of clerk of the town of Peru for the ensuing year, according to law, before me, Samuel Holmes, moderator. A true copy of certificate, William Woodsum, town clerk."—*Greene v. Lunt*, 58 Me. 518.

A tax assessed by assessors, who took the oath of office before the moderator of the town meeting at which they were elected, is not valid. A moderator is not authorized to administer oaths in such cases.—*Orneville v. Palmer*, 79 Me. 472, cites *Dresden v. Goud*, 75 Me. 298.

Parks, Squares, Libraries, Land Taken.—Whenever the municipal officers of a town decide to take private land for public purposes under this chapter, the return of such taking shall be filed in the clerk's office of their town, and a copy thereof, certified by such clerk, shall be recorded in the registry of deeds for the county. *Ibid.*, S. 90.

Perambulation of Town Lines.—The proceedings of the municipal officers in the perambulation of town lines shall, after every renewal of the boundaries between towns, be recorded in their town books. *Ibid.*, S. 108.

See "Selectmen."

Petroleum Cans, Marks.—All persons or corporations engaged in the sale of kerosene or other burning or illuminating oils or fluids, using cans of a capacity of not less than five gallons, with their names or other marks or devices stamped or otherwise produced upon such cans, or anything connected therewith, may file in the office of the town clerk in which their principal place of business is situated, a description of such names and marks used by them. C. 40, S. 13.

Pews, Deeds of, Record.—Pews and rights in houses of public worship are real estate. Deeds of them and levies by execution upon them may be recorded by the clerk of the town where the houses are situated, with the same effect as if recorded in the registry of deeds. C. 75, S. 31.

Pledges, Sale, notice.—The notice of a sale of personal property pledged for the payment of money shall be recorded in the clerk's office of the town where the pledgee resides, together with an affidavit of service. C. 93, S. 76.

Public Documents, Distribution.— Town clerks of the several towns shall promptly transmit to the librarian of the state library copies of all printed reports of said town, including all printed exhibits of town expenditures. C. 3, S. 15.

Records, Preservation.— Upon the completion of any book of record and registry belonging to the town, the town clerk shall deposit the same in the safe or vault provided by the town; and such books shall be kept in such safe or vault except when required for use. C. 4, S. 62.

Record and Registry Books; Returns.— The clerks of all towns shall in the month of December in each year, make a return to the clerks of the supreme judicial court in the several counties, showing the number and nature of such books of record and registry as are in their custody and where they are kept and deposited. Said return shall also show where the books of the municipal officers and treasurer are kept and deposited. *Ibid.*, S. 63.

Residence, Changes; Record.— The record of persons moving into or from a town made by assessors of taxes may be returned to the town clerk, who shall record the same in a book to be kept for such purpose, and shall furnish copies of such records upon payment of a reasonable fee. *Ibid.*, S. 42.

Sewer Assessments.— Any person not satisfied with the amount for which he is assessed may within ten days after the hearing, by request in writing, given to the town clerk, have the assessment on his lot determined by arbitration. The report of the referees made to the clerk of the town and recorded by him shall be final and binding upon all parties. C. 21, S. 6.

Tax Lists, Records; Errors Corrected.— When omissions or errors exist in the records or tax lists of a town or school district, or in returns of warrants for meetings thereof, they shall be amended, on oath, according to the fact, while in or after he ceases to be in office, by the officer whose duty it was to make them correctly. If the original warrant is lost or destroyed, the return, or an amendment of it, may be made upon a copy thereof. C. 4, S. 10.

In this case the notice of the time and place of meeting of the assessors was not in the warrant for the town meeting, but on a separate piece of paper and posted up near the warrant.— *Mussey v. White*, 3 Me. 310.

The regulations of the statute as to preparation of an alphabetical list are merely directory to the assessors or selectmen, who incur a penalty if they do not perform the duty. Failure to make and post the list does not render illegal and void the proceedings of the meeting.— *Mussey v. White*, *Ibid.* 297.

Where a town clerk has made a defective or erroneous record of a vote, it is competent for him while in office to amend it according to the truth.— *Chamberlain v. Dover*, 13 Me. 466.

When there is no town clerk, as well as when the clerk cannot be present, towns have authority under Stat. 1824, § 260, to choose a clerk *pro tempore* to record the proceedings of that meeting.— *Kellar v. Savage*, 17 Me. 444.

An amendment of a return can be made only by the same officer who made it and on his responsibility.—*Fossett v. Bearce*, 29 Me. 523.

An officer while in office may amend his records according to the facts, provided the rights of third persons are not thereby prejudiced.—*Jay v. Carthage*, 48 Me. 353.

When the record is silent on the subject, parol evidence that the moderator of a town meeting was sworn should be of a direct and positive character.—*Chapman v. Limerick*, 56 Me. 390.

Town Meetings, Preside; Clerk Pro Tempore.—During the election of moderator, the clerk shall preside. In his absence, either of the selectmen or of the assessors, and, if neither of those is present, any constable may do all the duties of clerk in receiving and counting the votes for moderator. The moderator may call on the voters to give in their ballots for a clerk *pro tempore* who shall be sworn by the moderator or a justice of the peace. *Ibid.*, S. 16.

Town Officers Summoned to Take Oath.—The town clerk or any two selectmen shall forthwith make a list of the names of all persons chosen into office, of whom an oath is required, and deliver it to a constable with a warrant to him directed; and he shall within three days thereafter summon each person named in such list to appear before the town clerk and take the oath of office. *Ibid.*, S. 25.

Trade Marks on Bottles.—All persons engaged in the manufacture or sale of soda water or other beverages may file in the office of the town clerk in which their principal place of business is situated, a description of the names and marks upon the bottles, syphons, or other vessels used by them. C. 40, S. 37.

Treasurer, Appointment; Record; Bond.—An appointment in writing by the municipal officers to fill a vacancy in the office of town treasurer, shall be recorded by the town clerk in the town records.

The treasurer's bond after its approval and acceptance by the municipal officers, shall be recorded by the clerk; and such record shall be *prima facie* evidence of its contents, but a failure so to record shall be no defense to an action upon such bond. C. 4, S. 19.

A bond requiring more than a "faithful discharge of his duties," cannot be demanded of him as a condition precedent to his being allowed to hold office.—*Cumberland v. Pennell*, 69 Me. 369.

Name Reported to State Treasurer.—When a town treasurer is elected and qualified, the clerk shall communicate his name to the treasurer of state, and no town shall receive any money from the treasurer of state until the name of its treasurer has been so communicated. *Ibid.*, S. 43.

Vessels, Liens.—If the vessel at the time is on the stocks, the attachment shall be made by filing in the office of the clerk of the town in which such vessel is, within forty-eight hours thereafter, a copy of so much of his return as relates to the attachment. C. 93, S. 11.

Vital Statistics; Blanks for Records.—The secretary of the state board of health shall furnish to town clerks a copy of the provisions of this chapter relating to the registration of vital statistics and suitable blanks for recording births, marriages, deaths and divorces, printed with appropriate headings. C. 61, S. 18.

Births; Burials.—The clerk of the town is required to record the returns made to him by the physician, mid-wife, or other person in charge, who attends at the birth of any child within the limits of his town. *Ibid.*, S. 19.

It is the duty of the town clerk who superintends the burial of any deceased person to obtain from the physician attending in the last sickness of the person deceased a certificate duly signed, setting forth as far as may be, the facts required in the record of a death, according to section eighteen. *Ibid.*, S. 22.

The collection of fees by a city clerk from an undertaker for the issue of burial permits, held to be illegal and fraudulent, being paid by the undertaker in ignorance of the law, the clerk knowing that the city had paid and was paying him the fees in question.—*Marcotte v. Allen*, 91 Me. 74.

Burial Permits.—If the body of a deceased person is brought into this state from without for burial, and if it is accompanied by a permit issued by the legally constituted authorities of the state from which it was brought, such permit shall be received as sufficient authority upon which the clerk of the town in which said body is to be buried shall issue a permit for burial; but if it is not accompanied by such permit the clerk of the town shall issue such permit only when furnished with satisfactory information. *Ibid.*, S. 23.

In case of any deceased person not having had the attendance of a physician in his or her last sickness, the town clerk may issue the certificate of death upon presentation of such facts as may be obtained of relatives, persons in attendance upon said deceased person during said last sickness or present at the time of death, or from any other source, and the permit for burial shall issue upon such information. *Ibid.*, S. 24.

Every undertaker or other person having charge of any tomb, vault or cemetery who shall receive a permit for the interment or disinterment of the dead body of any human being, shall preserve and return such permit to the clerk of the town from whom the same was obtained within six days after the day of the burial. *Ibid.*, S. 28.

Town clerks and sub-registrars may issue burial permits to persons in contiguous towns, when by so doing it would be more convenient for those seeking a permit; but in all cases the permit shall be made returnable to the town clerk of the town in which the death occurred. *Ibid.*, S. 30.

Unincorporated Places.—When a birth, marriage or death occurs in an unincorporated place, it shall be reported to the town clerk in the town

which is nearest to the place at which the birth, marriage or death took place, and shall be recorded by the town clerk to whom the report is made; and all such reports and records shall be made and recorded and returned to the state registrar as is provided herein. *Ibid.*, S. 26.

Monthly Record, Copy.—The clerk of each town shall, on the first Monday of each month, make a certified copy of the record of all deaths and births recorded in the books of said town during the previous month, whenever the deceased person, or the parents of the child born were resident in any other town in this state at the time of said death or birth, or whenever they were recently resident in any other town, or whenever the remains of any deceased person have been carried to any other town for burial, and shall transmit said certified copies to the clerk of the town in which said deceased person or parents were resident at or near the time of said birth or death, or to which the remains of such deceased person have been carried for burial, stating in addition the name of the street and the number of the house, if any, where such deceased person or parents so resided, whenever the same can be ascertained; and the clerk so receiving such certified copies shall record the same in the books kept for recording deaths or births. Such certified copies shall be made upon blanks to be furnished for that purpose by the registrar of vital statistics. *Ibid.*, S. 27.

Sub-registrars Appointed.—The town clerk shall appoint two suitable and proper persons, in each town, as sub-registrars, who shall be authorized to issue burial permits based upon a death certificate, as hereinbefore provided, in the same manner as is required of the town clerk; and the said record of death upon which the permit is issued shall be forwarded to the town clerk within six days after receiving the same, and all permits by whomsoever issued shall be returned to the town clerk as required by section twenty-eight. The appointment of sub-registrars shall be made with reference to locality, so as to best suit the convenience of the inhabitants of the town, and such appointment shall be in writing and recorded in the office of the town clerk. *Ibid.*, S. 29.

Returns to State Registrar.—The clerk of every town shall keep a chronological record of all births, marriages, and deaths reported to him and shall annually, between the fifteenth and twentieth days of January, transmit a copy of the record of all births, marriages, and deaths occurring during the year ending December thirty-one next preceding said report, to the state registrar, together with the names, residences, and official stations of all such persons as have neglected to make returns to him in relation to the subject matters of such records, which the law required them to make, all to be made upon blanks to be prepared and furnished by the state registrar, and if no births, marriages, or

deaths have occurred in the calendar year preceding the aforementioned time for making his annual returns, the town clerk shall send to the state registrar a statement to that effect. Whenever a birth, marriage, or death, required by law to be returned to or by such clerk is reported to or made by him in any year after its occurrence, and subsequent to his return made hereunder, he shall make due return thereof to the state registrar forthwith. *Ibid.*, S. 32.

Facts Not Reported.—The clerk of each town shall enforce, so far as comes within his power, sections ten, twenty, twenty-two, twenty-five, twenty-eight, and thirty-one of this chapter, and when he knows of any birth, marriage or death, which is not reported to his office in accordance with the provisions of this chapter, he shall collect so far as he is able to do so, the facts called for in the blank certificates of birth, of marriage, or of death, as furnished by the state registrar, and shall record them as is herein prescribed. *Ibid.*, S. 38.

Wages, Assignment of.—No assignment of wages is valid against any other person than the parties thereto unless such assignment is recorded by the clerk of the town in which the assignor is commorant while earning such wages. C. 113, S. 6.

An assignment of a contract is not the assignment of wages and need not be recorded.—*Augur v. Couture*, 68 Me. 427.

Payments for piece work in coupons transferable by delivery. The coupons, when presented, were credited to the holder on the books of the debtor concern. *Held*, that the transaction was not merely an assignment of wages, and the law requiring record did not apply.—*Stinson v. Caswell*, 71 Me. 512.

The rule requiring record of assignments of wages does not apply to wages wholly earned when the assignment is made.—*Wright v. Smith*, 74 Me. 495.

The rule requiring record does not cover an assignment when the assignor is commorant while earning the wages in an unorganized township.—*Wade v. Bessey*, 76 Me. 413.

An assignment of wages to be earned in a specified employment, though not under an existing employment or contract, is valid in equity.—*Edwards v. Peterson*, 78 Me. 367.

The record of the assignment must be in the organized plantation in which he is commorant while earning the wages, although he may have a legal residence elsewhere.—*Pullen v. Monk*, 82 Me. 415.

River-drivers are not commorant while driving logs in the towns through which they pass, and assignments of wages by them need not be recorded in such towns to be valid.—*Gilman v. Inman*, 85 Me. 105.

The amendment of the law by Stat. 1891, c. 73, requires actual notice to be given to employers of the assignment.—*Woods v. Ronco*, *Ibid.* 125.

Any order, writing, or act which makes an appropriation of a fund amounts to an equitable assignment of the fund.—*Harlow v. Bangor*, 96 Me. 294.

Ways; Bounds Filed.—A written return of their proceedings containing the bounds and admeasurements of the way, and the damages allowed to each person for land taken, shall be made and filed with the town clerk in all cases by the municipal officers of a town. C. 23, S. 18.

If the return of the selectmen of the laying out of a road describe it as a "town road," it will be sufficient, though it does not state for whose benefit.—*Mann v. Marston*, 12 Me. 35.

The return showing that the road was laid out by a majority of the selectmen at a meeting held at a certain time and place in pursuance of notice in a public newspaper published in the town, held sufficient, and the proceedings of the selectmen were valid.—*Goodwin v. Hallowell, Ibid.*, 275.

The return of the selectmen of their doings in laying out a way need not be recorded before it is offered to the town for acceptance.—*Cool v. Crommet*, 13 Me. 254.

It need not state that the way will be beneficial to the town or to some one or more of its inhabitants.—*Limerick Petitioners*, 18 Me. 186.

The return must be made and signed by a majority of the selectmen.—*Crommet v. Pearson*, 18 Me. 346.

It must state whether the way laid out is a town way or a private way. This must be distinctly stated in the return and is not to be inferred from other facts.—*Christ's Church v. Woodward*, 26 Me. 172.

A town cannot be adjudged to have delayed or refused to approve and allow a supposed way where there had been no proper return or report of the laying of such way by the selectmen.—*Lewiston v. County Commissioners*, 30 Me. 26.

The filing of the return with the town clerk is not alone sufficient to authorize the action of the town thereon.—*Guilford v. County Commissioners*, 40 Me. 296.

TOWN TREASURER.

Election.—The treasurer is elected annually by ballot at the annual town meeting. He may also be collector of taxes, but not assessor or selectman. C. 4, SS. 12, 14.

Bond.—The treasurer before entering upon the discharge of his official duties, gives bond to the inhabitants of his town with such sureties and for such sum as are designated by the municipal officers, not exceeding, however, twice the amount of the taxes to be collected during the year for which he is treasurer, conditioned for the faithful discharge of all the duties and obligations of his office. If such bond is not furnished and delivered to the municipal officers, within ten days after written demand of the municipal officers therefor, the office of treasurer is deemed vacant, and the town or plantation, at any meeting of its inhabitants legally called, may elect a treasurer to fill the vacancy, or the municipal officers may fill the vacancy by written appointment, which shall be recorded by the clerk in the town records. The municipal officers are the sole judges of the sufficiency of such bond and sureties. Such bond, after its approval and acceptance by the municipal officers, is recorded by the clerk. The municipal officers may accept any surety company authorized to do business in the state, as surety on the bond, and dispense with any further surety or sureties thereon. Any town or plantation may lawfully vote at its annual meeting, to raise money to be expended by its treasurer under the direction of the municipal officers, for the purpose of purchasing from any such surety company the bond required. *Ibid.*, S. 19.

Vacancy, How Filled.—In case of death, resignation, removal, or other permanent disability of the treasurer of a town or plantation, the municipal officers may appoint a citizen thereof to be treasurer until

his successor is elected and qualified. Such appointment is in writing and recorded.

Before such appointee enters upon his official duties he shall be sworn, and give bond to the town for the faithful performance thereof in such sum and with such sureties as the municipal officers order. *Ibid.*, SS. 23, 24.

Deputy, Appointment.—The treasurer of any town or plantation may appoint a citizen thereof as his deputy during his temporary absence or other temporary disability. The appointment shall be in writing and be recorded.

The treasurer and the sureties upon his official bond are responsible for all acts and omissions of his deputy in such office. *Ibid.*, SS. 20, 21.

Account, Quarterly.—Every treasurer shall render an account of the finances of his town, and exhibit all books and accounts pertaining to his office, to the municipal officers thereof, or to any committee appointed by it to examine said accounts, when required; and such officers shall examine such treasurer's accounts as often as once in three months. *Ibid.*, S. 22.

The failure of the selectmen to examine the accounts of a town treasurer will not affect the liability of the sureties on his bond, nor will a surety be released if the selectmen, failing to detect an error in addition, certify that the treasurer's account is correct when in fact there is a deficit.—*Farmington v. Stanley*, 60 Me. 472.

Breaches of a treasurer's bond.—An omission to render the detailed report prescribed; neglect or refusal to render an account of the state of the finances and to exhibit the books and accounts of the town to the municipal officers, and neglect to pay town orders presented to him for payment when he has funds of the town in his hands. The destruction of town money by an accidental burning of his house containing it, two weeks after his term of office expired, is no defense to an action on his bond for failure to pay orders as stated above.—*Monticello v. Lowell*, 70 Me. 437.

Annual Reports.—The town treasurer shall on or before the morning of each annual meeting, make a full, detailed, written or printed report of all his financial transactions in behalf of the town, during the municipal year immediately preceding, with a full account of the receipts and disbursements during that period, and to whom and for what purpose each item of the same was paid, with a statement in detail of the indebtedness and resources of the town. *Ibid.*, S. 41.

Betting at Elections; Prosecution.—The treasurer of the town or plantation entitled to a forfeiture for betting or wagering at an election, shall forthwith proceed to sue for it as soon as he has proper evidence thereof. C. 6, S. 98.

The suit must be brought within a year and the stakeholder is liable only as trustee.—*Gilmore v. Woodcock*, 70 Me. 496.

Bounties on Wolves.—A bounty of five dollars is paid by the town treasurer to every person who certifies under oath that he has killed a

wolf. Certificates and receipts for money so paid are transmitted by the treasurer, annually, in the month of December, to the treasurer of state who on approval by the governor and council refunds to the town the amount so paid. C. 32, S. 14.

Collector, Delinquent; Warrant.— If the constable or collector of any town or parish, to whom taxes have been committed for collection, neglects to collect and pay them to the treasurer named in the warrant of the assessors by the time therein stated, such treasurer shall issue his warrant, returnable in ninety days, and in substance as given in the statute to the sheriff of the county or his deputy, who shall execute it.

On each execution or warrant of distress issued by the treasurer of state, or by the treasurer of a county, town or parish, against a constable or collector, or against the inhabitants of a town, and delivered to a sheriff or his deputy, he shall make returns of his doings to such treasurer, within a reasonable time after the return day therein mentioned, with the money, if any, that he has received by virtue thereof; and if he neglects to comply with any direction of such warrant or execution, he shall pay the whole sum mentioned therein. When it is returned unsatisfied, or satisfied in part only, the treasurer may issue an alias for the sum due on the return of the first; and so on as often as occasion occurs. C. 10, SS. 48, 49.

Distress for Taxes.— The collector of taxes of any town and the treasurer of any town who is also a collector, may issue his warrant to the sheriff of any county, or his deputy, or to a constable of his town, directing him to distrain the person or property of any person not paying his taxes within three months after the date of the original commitment, which warrant shall be of the same tenor as that prescribed to be issued by municipal officers or assessors to collectors with the appropriate changes, returnable to the collector or treasurer issuing the same in thirty, sixty or ninety days.

When such collector or treasurer thinks that there is danger of losing by delay a tax assessed on any individual, he may distrain his person or property before the expiration of the time named in the preceding section. C. 10, SS. 67, 68.

Summons Before Distrain.— Before the officer serves any such warrant, he shall deliver to the delinquent, or leave at his last and usual place of abode, a summons from said collector or treasurer, stating the amount of tax due, and that it must be paid within ten days from the time of leaving such summons, with twenty cents for the officer for leaving the same; and if not so paid, the officer shall serve such warrant the same as collectors of taxes may do, and shall receive the same fees as for levying executions in personal actions. *Ibid.*, S. 69.

Dogs, Money for Licenses.—The town treasurer shall pay the money received by him from the clerk for dog licenses to the treasurer of state on or before September first of each year.

He shall keep an accurate and separate account of all moneys received and expended by him under the provisions of this chapter. C. 4, SS. 46, 47.

High School Taxes.—The town treasurer shall pay the expense of assessing and collecting any free high school precinct tax out of the money of the precinct, upon the order of the selectmen.

The collector or constable, and the town treasurer, or treasurer and collector, if one person is both, each have the same powers and are subject to the same duties and obligations in relation to free high school precinct taxes, as to town taxes; and they and the assessors shall be allowed by the precinct for their services, a compensation proportionate to what they receive from the town for similar services. C. 15, SS. 68, 70.

Innholders' Licenses.—The municipal officers, treasurer and clerk of every town grant licenses to innholders and victualers under such restrictions and regulations as they deem necessary.

No person shall receive his license until he has given his bond to the treasurer, to the acceptance of the board granting it, with one or more sureties in the penal sum of three hundred dollars, in substance as given in the statute.

Every person licensed shall pay to the treasurer, for the use of such board, one dollar; and the clerk shall make a record of all licenses granted. C. 29, SS. 1, 2, 4.

The constitutionality of the license law upheld.—*Dexter v. Blackden*, 93 Me. 473.

See also "Selectmen."

Itinerant Vendors, Licenses; Duties.—The collector of taxes on receiving an application for license by an itinerant vendor shall forthwith give notice thereof to the assessors of the town, who, or a majority of them, shall, as soon as practicable, examine the stock of goods described in such application, and shall compute and certify to said collector the amount of said applicant's local license fee for such intended sale in said town, which shall be a percentage on the full value of said stock of goods equal to the rate per cent. of the last preceding taxation in the town. C. 45, S. 7.

If an itinerant vendor packs and removes his entire stock of goods from the town and closes his store, he abandons all rights under his local license, and must procure a new one if he desires to do business again during the municipal year.—*Wolf v. Runnels*, 90 Me. 253.

Jurors; Duties.—The municipal officers, treasurer and clerk constitute a board for preparing a list of jurors to be laid before the town for their approval. C. 108, S. 1.

See “Town Clerk” and “Selectmen.”

Penalties for Neglect At Elections.—Penalties against selectmen or assessors for neglect of their duties at and concerning elections may be recovered by the treasurer in an action of debt for the use of the town, unless he is one of the delinquent officers, at the request of any voter in the town. C. 6, S. 84.

Seal of Town; Standard Weights and Measures.—The treasurers of towns, at the expense thereof, shall constantly keep a town seal, and, as town standards, a complete set of beams, weights, and copper and pewter measures conformable to the state standards, except that the bushel measure, and the half-bushel, peck and half-peck measures may be of wood instead of copper or pewter, but of the same dimensions, and except also a nest of troy weights other than those from the lowest denomination to eight ounces; they shall cause all beams, weights and measures, belonging to their towns, to be proved and sealed by the state or county standards once in ten years, from July one, eighteen hundred and forty; and for every neglect of said duty they forfeit one hundred dollars, half to the town, and half to the prosecutor. C. 44, S. 4.

School Money, How Paid.—No money appropriated by law for public schools shall be paid from the treasury of any town, except upon the written order of its municipal officers; and no such order shall be drawn by said officers, except upon presentation of a properly avouched bill of items. C. 15, S. 15.

Sheriff, Delinquent, Warrant Against.—When a sheriff or deputy is delinquent in the collection or payment of moneys collected for taxes, the treasurer may direct a warrant to a coroner of the county, requiring him to distrain therefor upon the delinquent's real or personal estate; and the coroner shall execute such warrants as a sheriff does on deficient constables and collectors. C. 10, S. 50.

Suits and Actions.—Treasurers of towns may maintain suits in their own names as treasurers on contracts given to them or their predecessors and prosecute suits pending in the name of their predecessors. C. 84, S. 27.

Where trespasses are committed on buildings, enclosures, monuments, or mile stones belonging to a town, the treasurer may sue for the damages in its name; if the property injured belongs to a school district, the treasurer of the town may sue in the name of such district. C. 97, S. 10.

Any town treasurer, or his successor in office, may maintain an action

on the case against any bank, or other corporation, and recover therein the tax assessed, if unpaid, and the lawful charges upon any share thereof, if any dividend thereon has been paid after such tax was assessed, provided the notice prescribed in section thirty-three of this chapter has been given; but judgment shall not be rendered in such action for a larger sum in damages than the dividend thus paid, and all such taxes and charges may be recovered in one suit, if said treasurer so elects. C. 9, S. 34.

A note given to D. P., treasurer of the county of K., may be enforced by suit in the name of his successor, though not expressly made payable to the successors of the payee.—*Rollins v. Lashus*, 74 Me. 218.

Tax Sale, Certificates Withdrawn; Deeds.— When real estate is sold for taxes, the collector shall, within thirty days after the day of sale, lodge with the treasurer of his town a certificate under oath designating the quantity of land sold, the names of the owners of each parcel, and the names of the purchasers; what part of the amount of each was tax, and what was cost and charges; also a deed of each parcel sold, running to the purchasers. The treasurer shall not deliver the deeds to the grantees, but put them on file in his office, to be delivered at the expiration of two years from the day of sale, in the case of lands of resident owners, and one year from the day of sale in the case of lands of non-resident owners, if the owner does not within such time redeem his estate from the sale, by payment of the taxes, and all charges, and interest on the whole at the rate of twenty per cent from the day of sale to the time of redemption, and costs as above provided, with sixty-seven cents for the deed and certificate of acknowledgment and all sums paid for internal revenue stamps affixed to such deed. If so redeemed, the treasurer shall give the owner a certificate thereof, cancel the deed, and pay to the grantee, on demand, the amount so received for him. If not so paid, he shall deliver to the grantee his deed, on payment of the fees, as aforesaid, for the deed and acknowledgment, and thirty cents more for receiving and paying out the proceeds of the sale. For the fidelity of the treasurer in discharging the duties herein required, the town is responsible, and has a remedy on his bond in case of default. *Ibid.*, S. 77.

Recitals required in a collector's deed of real estate sold for taxes.—*Ladd v. Dickey*, 84 Me. 190.

Redemption.— Any person to whom the right by law belongs, may, at any time within two years from the day of sale, redeem any real estate or interest of resident proprietors sold for taxes, on paying into the town treasury for the purchaser, the full amount so certified to be due, both taxes and costs, including the sum allowed for the deeds and stamps, with interest on the whole at the rate of twenty per cent a year from the date of the sale, which shall be received and held by said treasurer as the property of the purchaser aforesaid; and the treasurer shall pay to said

purchaser, his heirs or assigns, on demand; and if not paid when demanded, the purchaser may recover it in any court of competent jurisdiction, with costs and interest at the rate of twenty per cent, after such demand. The sureties of the treasurer shall pay the same on failure of said treasurer. And in default of payment by either, the town or plantation shall pay the same with costs and interest as aforesaid. *Ibid.*, S. 81.

Deed to Purchaser.— If no person having legal authority so to do redeems the same within the time aforesaid by paying the full amount required by this chapter, the treasurer shall deliver to the purchaser the deeds so lodged with him by the collector; and if he wilfully refuses to deliver such deed to such purchaser, on demand, after said two years and forfeiture of the land as aforesaid, he forfeits to said purchaser the full value of the property so to be conveyed, to be recovered in an action of debt, with costs and interest as in other cases; the sureties of said treasurer shall make good the payment here required, in default of payment by the principal; and on the failure of both, the town is liable. *Ibid.*, S. 82.

VOTERS.

Qualifications.— Every male citizen who had the right to vote on the fourth day of January, eighteen hundred and ninety-three, together with those who were sixty years of age and upwards on said day, and every other male citizen, excepting paupers, persons under guardianship, and Indians not taxed, who, not being prevented by physical disability from so doing, is able to read the constitution of the state in the English language, in such manner as to show that he is neither prompted nor reciting from memory, and to write his name, and who is twenty-one years of age or upwards, and shall have his residence established in this state for the term of three months next preceding any national, state, city or town election, shall have the right to vote at every such election in the city, town or plantation where his residence is so established, *provided*, however, that his name has been properly entered upon the voting-list of such city, town or plantation. C. 5, S. 2.

See "Selectmen."

Wood Measurers.— Towns choose annually at the annual town meeting two or more measurers of wood and bark, and the selectmen appoint if the town fails to elect them. C. 4, SS. 12, 14.

NEW HAMPSHIRE

NEW HAMPSHIRE.

INTRODUCTORY.

The laws of New Hampshire governing towns and town officers do not differ greatly from those of other states in New England, as regards the town organization and the functions of the principal officers. There has been less differentiation in the development of the town as a civil and political organism than in some of the other states. The chief functions of administration are still performed by the selectmen, and the other officers are less independent of their supervision and control than is the case in other states. There is scarcely any department in the affairs of the town which does not feel their directing hand.

They have the general oversight of the financial affairs of the town. Assessors of taxes are elected, but have no power to act by themselves. They can act only in conjunction with the selectmen, who, with or without their assistance, assess the taxes, and have general oversight of the collection of them. They have charge of the school funds and assign to each district its proportion of the same.

They have, as is usual in New England, the exclusive right to lay out and open public ways, and are responsible for the maintenance and repair of highways and bridges. Highway agents and surveyors, whose special duty it is to make repairs of the public ways, act under their direction and account to them for work done and money expended.

They have the powers usually vested in like officers in other states to grant locations to street railways in the public ways, to determine the mode of operating, the materials and kind of motive power to be used, the speed of running cars, and the construction of tracks, and other equipment of such railways. They have like authority in relation to telegraph and telephone companies, which are required to obtain licenses from them for the use of the public ways.

If a town fails to choose overseers of the poor or certain other officers, or a vacancy occurs in such offices, the selectmen are required to perform the duties of such offices until they are filled as provided by

law. They also have authority to appoint suitable persons to any office except those of selectmen, supervisors, and auditors, and in certain cases highway surveyors, when the town fails to elect them. They may remove from office any collector of taxes or treasurer who in their judgment has become insane or otherwise incapacitated to discharge the duties of his office, or who has neglected for ten days after notice to furnish a bond to their acceptance.

A town meeting may be warned by the selectmen when in their opinion there is occasion therefor, and it is their duty to prepare polling-places and election-booths, and to provide ballot-boxes for the use of voters at elections. They appoint inspectors, and assist in counting the votes cast at elections.

They may unite parts of two school districts with the concurrence of the district school boards, and, acting with like officers of another town, they may sever a part of the territory of one town and annex it to another town for school purposes; and such annexation has the same force and validity as if made by special act of the legislature. They are required once in every seven years to renew the marks and monuments which define the boundaries of their towns, in conjunction with the selectmen of the neighboring towns. Those of the town first incorporated, or, if both towns were incorporated on the same day, the selectmen of the town which is the highest in the proportion of public taxes, take the initiative in the perambulation.

They have authority to grant licenses to keepers of intelligence offices, dealers in old junk, and persons who manufacture, refine, mix, store or deal in petroleum or any of its products. They grant licenses also to persons to sell milk and cream, and may appoint inspectors of those articles. They appoint boards of health, and, whenever in their opinion the health of the inhabitants requires it, they may appoint an agent for vaccination, who may vaccinate all persons who have not had small-pox or kine-pox, at the expense of the town.

The laws of New Hampshire concerning the sale of intoxicating liquors require towns to establish local agencies for the sale of such liquors. Agents are appointed by the selectmen, who have the power to remove them, and have general oversight over their transactions. The town agents are supplied with spirituous and malt liquors by state agents appointed by the governor, and the money received from their sale is turned over to the town treasurer for the use of the town.

In New Hampshire there are two classes of minor municipal corporations, namely, fire districts and village districts. Of these, village

districts are of the greater importance. Such corporations are formed upon petition of ten or more legal voters who are inhabitants of any village situate in one or more towns. The petition is addressed to the selectmen of the town, who fix by suitable boundaries a district including the village and such adjacent parts of the town, or towns, as may seem to them convenient for the purposes enumerated. These purposes are in general the extinguishment of fires, the lighting or sprinkling of streets, the supply of water for domestic and fire purposes, the construction and maintenance of sidewalks and main drains or common sewers, and the appointing and employing of watchmen and police officers. The selectmen also call a meeting of the voters of the district proposed, to see if they will vote to establish the district and choose necessary officers for the same. Upon the passing of such vote and the election of officers, the district becomes a body corporate and politic.

The officers of a village district consist of a moderator, clerk, three commissioners, a treasurer, and such other officers and agents as the voters may deem necessary for managing the district affairs, or as may be required by law. Their duties correspond generally to those of town officers, the commissioners playing the part of selectmen. A district has authority by vote at a legal meeting to raise money by taxation, the clerk certifying the amount of money required to the selectmen of the town in which the district or any part of it is situated. The taxes are assessed by the selectmen upon the property of the district, and are collected by the collector of the town the same as other taxes are assessed and collected. The money so raised is expended under the direction of the district officers.

Districts may, like towns, exercise the power of condemnation of land, when it cannot be obtained for a reasonable price, for any of the objects for which they are organized.

A district established for any of the purposes mentioned may from time to time by vote add thereto any other of such purposes, and may, by a two-thirds vote of its legal voters, terminate its existence and dispose of its corporate property.

The qualifications of voters, as fixed by statute and an amendment of the state constitution adopted in 1903, limit the right to vote and eligibility to office to those persons, being natives or naturalized citizens of the United States, of the age of twenty-one years and upward, excepting paupers excused from paying taxes at their own request, who are able to read the constitution in the English language and to write; the latter provision, however, does not apply to any

person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who was sixty years of age or upward on the first day of January, 1904.

Registration is a prerequisite to the exercise of the elective franchise. To the board of supervisors of the check-list is committed the duty of registering voters. These officers are chosen at biennial elections and hold their offices for two years. Their decisions upon the qualifications of persons offering themselves for registration are final, and no person whose name is not upon the list prepared by them is allowed to vote at any election, unless his name was left off the list by mistake, and his right to vote was clearly known to the supervisors before the check-list was originally posted.

The following pages contain the statutes governing towns and town officers contained in the most recent compilation (1901), and the Public Acts passed since the adoption of the latter, including the Acts of 1905, together with citations from the decisions of the State Supreme Court bearing upon the same.

STATUTES.

[References not otherwise designated are to Public Statutes and Session Laws of New Hampshire, 1901, as amended.]

TOWN OFFICERS IN GENERAL.

Town officers are chosen from among the inhabitants of the town, and may be elected by the voters at the annual town meeting, or appointed by the selectmen when specially authorized to make such appointments. The term of office is usually one year, and removal from the town of the person holding an office creates a vacancy.

With the exception that two offices cannot be held by the same person at the same time, as is the case with a selectman, treasurer, collector of taxes and auditor, any qualified voter has equal right, with every other, to be chosen to any town office and, if elected, or appointed, may be compelled to serve. No compensation for such service can be claimed except in cases where compensation is provided by law.

As a rule, all town officers are required to be sworn before entering upon their duties, and their acts before such official oath has been taken are void. Some officers are required to give bond before entering upon their official duties.

If a collector of taxes has not taken the oath of office, he has not sufficient authority to act, notwithstanding he may have been duly elected, and is not protected by the statute, June 16, 1836, etc.—*Cavis v. Robertson*, 9 N. H. 524.

The statute requiring the oath of assessors to be filed and recorded in the office of the town clerk is merely directory, and the assessment of a tax will not be invalid if that provision of the statute be not complied with. So of selectmen, *Blake v. Sturtevant*, 12 N. H. 567; so of fence viewers, *Glidden v. Towle*, 31 N. H. 147.—*Hayes v. Hanson*, 12 N. H. 284.

Selectmen may appoint health officers, if none are chosen by the town.—*Bedford v. Rice*, 58 N. H. 446.

Selectmen cannot lawfully appoint supervisors in case of failure to elect by the town. No vacancy thereby occurs because the old board continue in office until others are chosen and sworn in their stead.—*State v. Hadley*, 64 N. H. 473.

Under the statute it is the duty of city councils to elect fire engineers; and a city ordinance delegating that duty to other municipal officers is void.—*Attorney-General v. Lowell*, 67 N. H. 198.

Neither the treasurer nor the collector of taxes shall be a member of the board of selectmen.—*Attorney-General v. Marston*, 66 N. H. 486.

A municipal corporation is liable at common law for injuries to private rights resulting from the negligent performance of a public duty by agents

and servants whom it has the power to direct and control. Commissioners elected by a city council and entrusted with the management of the water works are officers of the city.—*Rhobidas v. Concord*, 70 N. H. 90.

ASSESSORS OF TAXES.

Any town may choose assessors by ballot and by major vote, who shall constitute, with the selectmen, a joint board for the assessment of taxes; and all questions arising at such board shall be decided by major vote of the members thereof. C. 43, S. 6.

Assessors have no power to act in relation to the assessment of taxes independently of the selectmen; but they constitute a part of a joint board with the selectmen, and can act only as members of such board.—*Hayes v. Hanson*, 12 N. H. 284.

Selectmen alone may assess taxes, if no assessors are elected.—*Scammon v. Scammon*, 28 N. H. 419.

AUDITORS.

Every town at the annual meeting is required to choose one or more auditors, whose duty it is to examine carefully the accounts of the selectmen, town treasurer and collector of taxes, at the close of each fiscal year, and at other times when necessary, and report to the town whether the same are correctly cast and well vouched. If any town fails to choose such officers, or the office becomes vacant, it is the duty of the supervisors of the check-list to appoint them. If either supervisor is also treasurer, the other two members of the board make the appointment. *Ibid.*, SS. 23, 24.

BUILDINGS INSPECTOR.

Any town may appoint an inspector of buildings for the town, prescribe his duties and fix his compensation. And any such town may by ordinance or by-law prescribe regulations for the construction and maintenance of all buildings in the town; and all buildings thereafter erected or remodeled in such town shall conform to such regulations.

All plans for the erection or remodeling of any building in a town which has appointed a building inspector, shall be submitted to such inspector for his examination and approval, under the regulations prescribed by the town. No building shall be erected or remodeled in such town without the approval of the plans therefor by such inspector; and if such inspector shall refuse to approve of any plan submitted to him, any person aggrieved thereby may appeal from the decision of such inspector to the superior court for the county in which such town is situated. Acts of 1903, C. 136, SS. 1, 2.

In the absence of an inspector the firewards and engineers or the selectmen of the town constitute a board for the inspection of buildings, and shall inspect the same from time to time. Their proceedings are upon notice and a hearing of the parties interested, and are recorded in the records of the town. They have authority to require

any alterations in buildings which they may deem necessary, and may order a building or hall to be closed until such alterations are made. C. 116, SS. 3, 4.

CAUCUSES.

Notices.—Under the provisions of chapter 93 of the Acts of 1905, town caucuses are called by a notice posted in five conspicuous places in the town, one of which shall be the postoffice, and published in some newspaper, if there be any published in the town, ten days or more before the day of the caucus.

Such notices specify the place, the day, and hour of the meeting, and the time during which the polls will be open for the reception of ballots, which shall not be less than one hour. The time for the reception of ballots of all other caucuses than those for the election of delegates to conventions, which is fixed by the executive committee of the party holding the caucus, in towns having not more than two thousand inhabitants, shall be not less than two hours, and in towns having more than two thousand inhabitants not less than three hours.

All nominations and elections of any caucus shall be by ballot, and in balloting a check-list shall invariably be used, and a plurality shall be sufficient to nominate or elect.

Check-list; Ballots.—The check-list used at any caucus shall be prepared by the local executive committee of the party holding the caucus. No man shall be allowed to vote in the caucus unless his name is on the check-list, and no name shall be placed on the check-list after the hour of the opening of the caucus has arrived, except the name of a person whose right to vote in the caucus is well known to the executive committee. The local executive committee of the party has full power to regulate the form, size and character of the ballots to be used, and the manner of conducting the caucus in any way consistent with the provisions of this act.

Legal Voters.—No person shall vote in the caucus of more than one political party, or having voted in the caucus of one party shall sign the nomination papers of any other party. No person shall vote at any caucus unless he intends to support the ticket of the party holding the caucus at the next ensuing election, and when the right of any person to vote in a caucus is challenged, he shall stand aside and subscribe to the oath or affirmation prescribed in this act.

Presiding Officer; Duties.—The presiding officer of every caucus shall within forty-eight hours after the close of such caucus file with the clerk of the town in which the caucus was held the check-list used in such caucus, and the clerk shall keep the same for two calendar months thereafter in his office open to the inspection of every citizen of the town. In filing nominations with the secretary of state, the presiding

officer of the caucus shall certify that the caucus was called and conducted according to the provisions of this act.

Act in Force.—This act shall be in force in all cities of twelve thousand inhabitants, according to the census of 1900, and in such other cities and towns of the state as shall by a majority vote of the voters at an annual or biennial meeting adopt the same. Acts of 1905, C. 93, SS. 1-10.

CLERK.

See "Town Clerk."

COLLECTOR OF TAXES.

Election.—Every town may choose annually by major vote one or more collectors of taxes. No person can hold at the same time the offices of selectman, treasurer, collector of taxes, and auditor. C. 43, SS. 25, 34.

Bond.—Every collector shall, within six days after his election or appointment, give bond, with sufficient sureties to the acceptance of the town or selectmen, for the faithful performance of the duties of his office, in form like that of county officers, and in default thereof, the office shall become vacant. *Ibid.*, S. 27.

It is no objection to collector's bond that it was made to the selectmen as obligees.—*Horn v. Whittier*, 6 N. H. 88.

A collector's bond will be held good, though it has no witness or is dated on Sunday, if it appears to have been delivered on Saturday, or the collector is recited in it to be chosen instead of appointed, or its acceptance was not in writing, and can only be shown by parol.—*Pierce v. Richardson*, 37 N. H. 306.

On a collector's bond it is not necessary that there should be as many separate seals as there are signers. Two or more signers may adopt one seal.—*Northumberland v. Cobleigh*, 59 N. H. 250.

The acceptance of a collector's bond filed within the statutory period of six days by the mayor and aldermen of a city, after that time, is a valid approval of the bond, and relates back to the time of filing.—*Drew v. Morrill*, 62 N. H. 23.

A collector of taxes who has not completed his collections and has not been discharged from liability as collector, is disqualified to hold the office of selectman.—*Att'y-General v. Marston*, 66 N. H. 486.

Powers of Constables.—Every collector, in the collection of taxes committed to him and in the service of his warrant, shall have the powers vested in constables in the service of civil process, which shall continue until all the taxes in his list are collected. C. 60, S. 1.

An officer who admits expressly that he has not taken the oath of office is not qualified to perform any official act.—*Johnston v. Wilson*, 2 N. H. 202; *Cavis v. Robertson*, 9 N. H. 524.

Where the office of collector was sold to the highest bidder and the town afterwards chose the same person collector it was held that although the proceeding was illegal, the collector, coming into office under color of an election, is to be considered an officer *de facto* and the objection cannot be taken in an action against the selectmen.—*Tucker v. Aiken*, 7 N. H. 113.

The sheriff under the act of 1831 had the same power as the collectors of towns have, and his powers continued until the taxes were collected.—*Homer v. Cilley*, 14 N. H. 85.

If the tax warrant requires the collector to pay over the taxes collected at certain times, that does not preclude him from pursuing the necessary measures for their collection after that time.—*Smith v. Messer*, 17 N. H. 420.

The law does not require a return upon the warrant.—*Johnson v. Allen*, 48 N. H. 241.

If the warrant be not deficient in the general form of it and was issued in the ordinary manner from the selectmen, the collector is required at his own peril to pay obedience to it, and will be protected therein.—*State v. Roberts*, 52 N. H. 492.

A tax collector's warrant is not a returnable process.—*Hoitt v. Burnham*, 61 N. H. 620.

The removal of a tax collector from the town vacates his office. He has no authority outside the town to seize the property of a resident of the town to enforce the collection of a tax.—*Gage v. Dudley*, 64 N. H. 437.

Vacancies; Appointment.—If a collector of taxes dies, removes from town, or is removed from office before completing the collection of the taxes committed to him, the selectmen may appoint some suitable person to collect the remainder of such taxes, and issue a warrant to him for that purpose. He shall give bond, possess the powers, perform the duties, and be paid as other collectors. *Ibid.*, S. 29.

In case of removal from town, or office, or the death of a collector, he, his executors or administrators, and all other persons into whose hands any of his unsettled tax-lists may come, shall forthwith deliver the same to the selectmen. *Ibid.*, S. 30.

The appointment of a collector to succeed another in the collection of a tax shall not affect in any way the bond of the predecessor, but the signers thereof shall continue liable for all acts and negligence of such predecessor while he was collector. *Ibid.*, S. 31.

Any distress begun by a deceased or removed collector, or one who vacates his office by removal from town or otherwise, may be completed by his successor in the same manner as it could have been by him who began it. *Ibid.*, S. 32.

Deputies, Appointment of; Powers.—Any collector, being authorized by vote of the town, may appoint deputies, who shall be sworn, give bonds to the satisfaction of the selectmen, and have the powers of collectors, and may be removed at the pleasure of the collector. *Ibid.*, S. 20.

Where an appointment of collector of taxes is made by the selectmen, the appointment must be in writing and recorded.—*Ainsworth v. Dean*, 21 N. H. 400.

The removal of a tax collector from a town vacates his office.—*Gage v. Dudley*, 64 N. H. 437.

Compensation.—Every town, at the annual meeting, may determine the rate or amount of compensation to be allowed the collector of taxes for his services. Whenever the selectmen appoint the collector, they shall make a written contract with him in relation to his compensation. *Ibid.*, S. 26.

A failure to make a written agreement as to compensation does not invalidate the appointment of a collector of taxes.—*Fletcher v. Drew*, 48 N. H. 180.

A contract between a tax collector and a town whereby the former guarantees the latter against loss on account of unpaid taxes is void as contrary to public policy: An agreement between the selectmen and a collector that a tax warrant shall continue in force after the town has been fully paid and until all taxes have been collected is unauthorized and void.— *Page v. Claggett*, 71 N. H. 85.

Collectors shall be entitled to the same fees for the collection of taxes by distress and sale, or for arresting or committing any person to jail, as sheriffs may be entitled to receive for like services upon civil process. C. 60, S. 11.

A collector is subject to a penalty of five dollars for taking illegal fees. A collector of resident taxes is not subject to a penalty of fifty dollars for taking illegal fees.— *Scammon v. Tilton*, 23 N. H. 434.

Liability for Official Acts.—No person to whom any list of taxes shall be committed for collection shall be liable to any suit by reason of any irregularity or illegality of the proceedings of the town or of the selectmen, nor for any cause whatever, except his own official misconduct. *Ibid.*, S. 16.

A collector may arrest the body of the tax-payer, unless the latter produces property sufficient with indemnity as to title, if required.— *Kinsley v. Hall*, 9 N. H. 190; *Osgood v. Welch*, 19 N. H. 105; *State v. Roberts*, 52 N. H. 492.

An omission to sign the list of taxes is an irregularity of the selectmen, and the collector is not responsible on that account. The list may be made, by proper reference, so far a part of the warrant that the signature of the warrant will be held sufficient to protect the collector.— *Thompson v. Currier*, 24 N. H. 237.

A collector having taken the body for a tax cannot afterwards distrain property for it.— *Butler v. Washburn*, 25 N. H. 251.

A collector cannot be protected in acting under a process illegal and defective on its face, as where the list of taxes was not signed by the selectmen.— *Gordon v. Clifford*, 28 N. H. 402.

A collector may justify as such by showing his appointment by the selectmen.— *Roberts v. Holmes*, 54 N. H. 560.

It is his duty to exhaust his authority in reasonable efforts to collect the taxes without regard to his opinion of the regularity or legality of the assessment.— *Gove v. Newton*, 58 N. H. 359.

Arrest for Want of Goods.—For want of goods and chattels whereon to make distress, the collector may take the body of any person neglecting or refusing to pay the tax assessed against him, and commit him to the common jail. *Ibid.*, S. 8.

A collector cannot justify an arrest by virtue of a list and warrant where the list is not signed by the selectmen. Such a process is void upon its face.— *Gordon v. Clifford*, 28 N. H. 402.

A collector is not liable in trespass for arresting a delinquent on election day even if the latter could have claimed exemption from arrest on that day.— *Woods v. Davis*, 34 N. H. 328.

An arrest regularly made by a collector of taxes upon a warrant of the selectmen is legal, although it be shown that the person was not liable to assessment; his remedy is against the selectmen or the town.— *Kelley v. Noyes*, 43 N. H. 209.

If the warrant be not deficient in the general form of it, and was issued in the ordinary manner by the selectmen, the collector is required by law, at his own peril, to pay obedience to the process and will be protected therein.— *State v. Roberts*, 52 N. H. 492.

Copy of Warrant to Jailor.—In such case the collector shall give to the jailor an attested copy of his warrant, and thereupon certify the sums such person is taxed in his list, and that he has taken his body for want of goods and chattels whereon to make distress; and the jailor shall receive and detain such person in his custody until he pays such tax, cost of commitment, and charges of imprisonment, or until he is otherwise discharged by due course of law. *Ibid.*, S. 9.

Failure to put upon the copy some hieroglyphics indicating that there was a seal upon the warrant did not affect the validity of the copy, which was sufficient in other respects.—*Gordon v. Clifford*, 28 N. H. 412.

Distress; Notice; Exemptions; Sale; Account.—The collector shall give notice of such tax to every person taxed, or leave a notice thereof in writing at his abode, fourteen days at least before he shall distrain therefor, unless in cases where he has reason to believe such person is about to remove from town. But no notice of the tax shall be necessary under this section if the tax is against a person who is not an inhabitant of the state, or if the person against whom the tax was assessed has removed from the town. *Ibid.*, S. 2.

Where a tax-payer removed to another town to the house of a son-in-law and the object was to evade payment of a tax against her, *held*, that a collector might lawfully open a door to make an arrest.—*Gordon v. Clifford*, 28 N. H. 402.

Whether the notice must be oral or in writing is not settled, but he must have actual notice.—*Downing v. Farmington*, 68 N. H. 188; *Gordon v. Clifford*, 28 N. H. 402.

Notice.—The collector shall give the same notice, in writing, of all taxes assessed against any corporation, to the cashier, treasurer, or some principal officer of the corporation.

Upon neglect or refusal of any person or corporation to pay the taxes assessed upon them, the collector may distrain the goods and chattels of such person or corporation. *Ibid.*, SS. 3, 4.

A collector of taxes is not bound to search for property but may arrest the body unless the party produces property sufficient, with indemnity as to title, if required.—*Kingsley v. Hall*, 9 N. H. 190.

In the collection of taxes upon a warrant a collector may distrain property or take the body; but having taken the body for a tax, he cannot afterwards distrain property.—*Butler v. Washburn*, 25 N. H. 251.

A collector in distraining must exercise a sound discretion as to the property seized. He is bound to select such articles as will best facilitate the satisfaction of the tax with the least expense and inconvenience to the taxpayer.—*Jewell v. Swain*, 57 N. H. 506.

Exemptions.—No distress shall be made of any person's tools or implements necessary for his trade or occupation, nor of his arms, nor of household utensils necessary for upholding life, nor of bedding or apparel necessary for him or his family. *Ibid.*, S. 5.

Distrain, Mode.—The collector shall keep the property distrained four days at the cost of the owner. If the tax, cost, and charges are not

then paid, he shall post, in two or more public places in the town where the sale is to be, twenty-four hours before the time of sale, a notice of the place, day, and hour of sale, with a particular description of the property to be sold; and at the time and place appointed, which shall be in the town where the distress is made, between the hours of ten in the forenoon and six in the afternoon, and within forty-eight hours after the expiration of said four days, he shall sell the same at auction. C. 60, S. 6.

Where a collector, having seized goods, kept them beyond the time prescribed by the statute, it was *held* that by so keeping the goods the collector did not become a trespasser.—*Ordway v. Ferrin*, 3 N. H. 69; So, *Souhegan Fac'ty v. McConihe*, 7 N. H. 321.

It is not necessary to insert in the advertisement of sale whether money or paper will be taken, but a general advertisement of goods for sale at auction is a sufficient notice that they are to be sold for money.—*Johnson v. Dole*, 3 N. H. 328.

A collector, after selling enough of the property distrained to pay the owner's tax and costs, cannot sell any more.—*Thompson v. Currier*, 24 N. H. 237.

A distress taken on Monday for neglect to pay a highway tax is properly advertised on the following Saturday to be sold the next Monday.—*Mason v. Thomas*, 36 N. H. 302.

A collector, who distrains goods for non-payment of taxes, must keep them four days before he advertises them for sale, so that the owner may redeem them; otherwise the sale will be illegal.—*Lefavour v. Bartlett*, 42 N. H. 555.

Account Given to Owner.—A particular account in writing of the taxes of the delinquent, the collector's fees, and the charges of keeping and sale, and the amount of sale of each article, with the overplus, if any, after deducting taxes and charges, shall be delivered immediately upon such sale, to the owner, or be ready to be delivered to him upon request. *Ibid.*, S. 7.

Removal, For.—In case of removal from town, or of an assessment upon the personal property of non-residents, the collector may distrain the property, or arrest the body of any person named in his list, wherever such person or his property may be found. *Ibid.*, S. 10.

A collector has no authority outside the town in which he has his appointment to seize the property of a resident of the town to enforce a tax.—*Gage v. Dudley*, 64 N. H. 437.

Corporations, Taxes Collected.—The real and personal property of corporations shall be liable to be taken and sold for taxes in the same manner as the property of individuals; and the franchise of taking toll may be taken and sold for taxes in the same manner as the same may be sold on execution. *Ibid.*, S. 12.

Real Estate, Taxes How Collected.—The real estate of every person or corporation shall be holden for all taxes assessed against the owner thereof; and all real estate assessed as resident, whether in the name of the owner, occupant, heirs, or estate, shall be holden for all taxes

assessed thereon for one year from the first day of July following such assessment, and for highway taxes assessed thereon for two years from such date. Such real estate may be sold by the collector, in case the owner or person to whom the same is assessed shall die or remove from town and leave there no personal estate on which distress can be made, or in case such person or corporation shall neglect or refuse to expose goods and chattels whereon distress may be made, or in case such tax shall not be paid on or before the first day of January next after its assessment. C. 60, S. 13.

The presumption is against the validity of a collector's deed. He who claims title to land under such a deed must show affirmatively that the law has been substantially pursued at the sale.—*Waldron v. Tuttle*, 3 N. H. 340.

The provisions of the statute as to the limit of time for which the real estate is holden for taxes are cumulative, and do not prevent an arrest in case there be no goods or chattels whereon to make distress, or in case the tax-payer has removed from town.—*Gordon v. Clifford*, 28 N. H. 402.

As against an owner of land to whom a tax is assessed, the land may be sold for the tax by the collector after as well as before the expiration of the lien created by the statute.—*Gove v. Newton*, 58 N. H. 359.

Under the statute real estate was not holden for payment of the poll-tax of a person in possession under a parol agreement to purchase.—*Buttrick v. Nashua Iron & Steel Co.*, 59 N. H. 392.

A former owner remains liable for a tax, but against his grantees and creditors the lien lasts but a year.—*Mason v. Bilbruck*, 62 N. H. 441; *Dana v. Colby*, 63 N. H. 169.

The husband of a mortgagee of land cannot acquire title to the mortgaged premises as against his wife by purchase at a tax sale thereof.—*Laton v. Balcom*, 64 N. H. 92.

Notice of Sale.—The collector shall give notice of such sale by posting advertisements thereof in two or more public places in the town at least six weeks before the sale, in which shall be stated the name of the owner, or of the person to whom the same was taxed, and also the name of the occupant, if any, at the time of posting such notice, the amount of the tax, and the place, day, and hour of the sale. *Ibid.*, S. 14.

Under the statute requiring the first publication eight weeks prior to the sale, the date of a paper is ordinarily to be regarded as the date of its publication.—*Schoff v. Gould*, 52 N. H. 512.

The section of the statute providing for publication of notice for three successive weeks, at least six weeks before a sale, requires the last publication to be at least six weeks before the sale.—*Moury v. Blandin*, 64 N. H. 3.

Method of Sale.—The powers and duties of the collector in relation to such sale; the time, place, and manner of the same; the powers and duties of the collector and town clerk in relation to the proceedings subsequent thereto; the fees of the collector and town clerk, and the rights of the owner in relation to the redemption thereof,—shall be the same as are prescribed by law relating to the sale of the estates of non-residents. *Ibid.*, S. 15.

When a collector sells land for taxes it must be at auction, to the highest bidder; and a copy of the sale must be lodged with the town clerk within ten days after the sale. But the account of the sale need not be made by the

collector. It may be made by his clerk. It is not a valid objection to his proceedings that the expenses of the sale are not specified.—*Pr. of Cardigan v. Page*, 6 N. H. 182.

Where land was sold for non-payment of taxes by the collector on May 4, 1865, and the collector gave his deed of same to the purchaser on May 4, 1866, *held*, that one year for redemption of the land sold had not expired and the deed was given prematurely.—*Annan v. Baker*, 49 N. H. 161.

In the collection of taxes of residents an advertisement of a collector's sale of real estate in which the name of the occupant, at the time of posting such notice, is not stated as required by law, is insufficient and a sale made upon such notice is invalid.—*Savings Bank v. Alger*, 66 N. H. 414.

Lists, Complete Collection.—Every collector of taxes shall collect all taxes set down upon the lists committed to him for that purpose, except such as are abated, and shall possess all the powers of the office until they are collected, unless he is sooner removed as provided in this chapter. C. 43, S. 33.

CONSTABLES.

Election; Bond.—Any town, at the annual meeting, may choose one or more constables.

Every constable shall, within six days after his election or appointment, give bond, with sufficient sureties to the acceptance of the town or selectmen, for the faithful performance of the duties of his office in form like that of county officers, and in default thereof, the office shall become vacant. C. 43, SS. 25, 27.

Bastardy Case, Arrest in.—Whenever a warrant shall be issued by any justice, and the person charged therein shall, either before or after the issuing thereof, escape or go out of the county, the sheriff thereof or his deputy, or any constable of the town, to whom such warrant shall be directed, may pursue such person and apprehend him in any county, and carry him before any justice in the county in which he was apprehended for examination. C. 87, S. 11.

Cruelty to Animals, Prosecutions.—It shall be the duty of constables to prosecute violations of this chapter (cruelty to animals). C. 267, S. 10.

Dogs Unlicensed, Kill.—The selectmen of each town shall, annually, within ten days from the first day of May, issue a warrant to one or more police officers or constables directing them to proceed forthwith either to kill or cause to be killed all dogs within such town not licensed and collared according to the provisions of this chapter, and to enter complaint against the owners or keepers thereof; and any person may, and every police officer shall, kill or cause to be killed all such dogs whenever and wherever found. Acts of 1891, C. 60, S. 11.

Dogs, Unmuzzled, Kill.—After passing an order requiring dogs to be muzzled, posting and publishing the same, the selectmen may issue their warrant to one or more constables of the town, who shall after

twenty-four hours from the publication of such notice, kill all dogs found unmuzzled or running at large, contrary to such order. *Ibid.*, S. 19.

Returns.—Each constable to whom the warrant named in the preceding section is issued shall return the same, on or before the first day of July following, to the selectmen issuing the same, and shall state in said return the number of dogs killed, and the names of the owners or keepers thereof, and whether all unlicensed dogs in his town have been killed, and whether complaints have been entered against all the persons who have failed to comply with the provisions of this chapter. *Ibid.*, S. 12.

Officers, Elect, To Notify.—The town clerk shall by a precept under his hand direct a constable or police officer to notify the persons chosen to appear before him within six days after receiving the notice, and take the oath by law prescribed. The officer shall within four days give personal notice to the persons therein named, or leave a notice in writing at the abode of each, and make return of the precept and of his doings thereon to the town clerk within six days.

Peace, Conservators.—All police officers are by virtue of their appointment constables and conservators of the peace. C. 249, S. 3.

Probate Court, Serve Process.—Constables are required to serve any legal process to them directed by a judge of probate. C. 182, S. 26.

Town Meetings, Preserve Order.—The moderator may command any constable or police officer, or any legal voter of the town to remove a disorderly person from the meeting and detain him until the business is finished.

Every constable or police officer shall obey the orders and commands of the moderator, and may command such assistance as is necessary; and if any constable or police officer neglects to perform any of the duties imposed by this or the preceding chapter, he shall forfeit forty dollars for the use of the town. C. 42, SS. 9, 10.

United States Inspectors, Assist.—The inspectors of the bureau of animal industry of the United States, shall have power to call on sheriffs, constables and peace officers to assist them in the discharge of their duties, and it is made the duty of said officers to assist them when so requested. C. 113, S. 2.

Warrant for Town Meetings.—Warrants for town meetings may be directed to a constable requiring him to notify the inhabitants; and such constable shall post an attested copy of such warrant as provided in section 4. C. 41, S. 5.

Writs; Service.—Constables shall serve and return writs and other civil precepts to them directed, wherein the amount demanded in damages does not exceed thirteen dollars and thirty-three cents, and no others, and shall have similar powers and be subject to similar liabilities in relation thereto as sheriffs. C. 212, S. 5.

No constable is disqualified to serve a writ or other precept in which a town or other corporation is a party by reason of his being a citizen of the town or a member of the corporation. *Ibid.*, S. 6.

Penalty for Refusal.—If any such officer refuses or neglects to serve a legal precept to him directed and delivered for service, his fees therefor being first tendered, or without such tender in criminal cases when the precept is endorsed by the attorney-general or solicitor, or by the clerk by order of court, he shall forfeit fifty dollars to any person aggrieved thereby who shall sue therefor within three months. C. 212, S. 7.

CULLERS OF HOOPS AND STAVES.

Cullers of hoops and staves are chosen at the annual meeting of the town. C. 43, S. 25.

They are required to view and cull all hoops, staves and heading previous to the exportation thereof, and give a certificate of the quantity on payment therefor. C. 128, S. 2.

The dimensions of staves, hoops, shocks, and heading, and the quantity in each bundle are fixed by statute, as also are the fees for culling and surveying them.

Penalties and forfeitures are provided against persons who export from the state the articles mentioned without being surveyed and culled as required by law. And any culler who is guilty of any fraud in the performance of his duties, or who unreasonably refuses or neglects to attend to the same, upon tender of his fees, is subject to a penalty for such offenses. *Ibid.*, SS. 10, 11, 12, 14, 15.

ENGINEERS.

See "Firewards."

FENCE-VIEWERS.

Election; Legal Fence.—A town may choose by major vote one or more fence-viewers annually at the annual town meeting. C. 43, S. 25.

All fences four feet high and in good repair, consisting of rails, timber, boards, or stone wall, and all brooks, rivers, ponds, creeks, ditches, hedges, and other things deemed by the fence-viewers to be equivalent thereto, shall be accounted legal and sufficient fences. C. 143, S. 5.

Duties.—In cases of disagreement between the owners of adjoining lands, concerning a division fence, either party may apply to the fence-

viewers of the town, who shall thereupon view the fence in dispute, and, if they find the same insufficient, shall notify the delinquent party to build or repair the same within a time by them limited. *Ibid.*, S. 6.

Upon application of either party, they shall view any brook, river, pond, creek, or ditch alleged not to be equivalent to a legal and sufficient fence, and, if they judge it to be not so equivalent, shall make a division of the fence; and they may, in case it is impracticable to build the fence on the boundary line without unreasonable cost, determine where it shall be located, and notify the parties to build it according to such division and location. *Ibid.*, S. 8.

They shall, on application, view any fence built or repaired as by them directed; and, if they judge the same and the residue of the fence between the same owners upon the same tract of land to be sufficient, they shall appraise the fence so built, or the repairs so made. *Ibid.*, S. 10.

Procedure.—Every application to the fence-viewers shall be in writing, and one application may embrace so many subjects as from the nature of the case may be acted upon at one meeting. *Ibid.*, S. 17.

It is the duty of the fence-viewers to give notice in writing to the other party interested therein of every application and of the time and place for considering the same; they shall hear the parties and their evidence; shall make their decision in writing, and cause a copy thereof to be given to each of the parties within one week. *Ibid.*, S. 18.

The decision of the fence-viewers upon their being sworn that they have acted impartially, uprightly and to the best of their judgment, shall be final and conclusive upon the parties. *Ibid.*, S. 19.

If the fence in controversy is situated on the line of two towns, the application shall be made to the fence-viewers of the town in which the party resides. If they reside in different towns, to the fence-viewers of that town in which the applicant does not reside. *Ibid.*, S. 20.

The owner of a close cannot sustain an action for damage done by horses or cattle breaking into his close through defects in the fences which he was bound to repair; *provided* the horses or cattle so breaking in were rightfully on the adjoining land. But if not he may sustain an action for breaking into his close in that case.

Unless the party owns the soil of the highway he cannot turn his horses loose upon it. If so he is liable for damage caused by the horses breaking into an adjoining close from the highway.—*Avery v. Maxwell*, 4 N. H. 36.

It is settled law that no man is bound to fence against cattle that are upon the highways unless they are rightfully there, following *Avery v. Maxwell*, 4 N. H. 36.—*Mills v. Stark*, 4 N. H. 512.

It is the occupier, not the owner, of a close who is bound to keep the fences in repair.—*Tecksbury v. Bucklin*, 7 N. H. 518.

Where there has been a parol partition of a fence executed by the parties it cannot be revoked except on application to the fence-viewers. A mere notice to the adjoining owner of a revocation is insufficient.—*York v. Davis*, 11 N. H. 241.

Where sheep broke through a fence that had been duly divided and record made thereof between O. & P., P. was entitled to recover for trespass against O. whose sheep so broke in and did damage.—*Page v. Olcott*, 13 N. H. 399.

A person is not bound to fence against cattle unlawfully in the highway.

The rule of the common law is that a man is bound to keep his cattle on his own land at his peril.—*Towns v. Cheshire R. R. Co.*, 21 N. H. 366.

A judge who is related to one of the parties in the fourth degree is disqualified to act. The duties of fence-viewers are chiefly judicial. Proceedings before fence-viewers are void where one of them is an uncle to one of the parties.—*Sanborn v. Fellows*, 22 N. H. 473.

One who seeks to recover for money paid for the services of fence-viewers must show that he called them to divide the fence on the true line between himself and the adjoining owner.—*Gallup v. Mulvah*, 24 N. H. 204.

It is no defense to an action for costs by fence-viewers that copies of the report are not furnished to the parties within one week after the decision, nor that the items of the fees are not specified in the report.—*Gallup v. Mulvah*, 26 N. H. 132.

Several separate fences may be included in one application to fence-viewers for a division; and if they are separately and distinctly divided, it will be no objection to the legality of a part that others are improperly included in the application, nor any objection to the payment of fees for those legally divided.—*Glidden v. Towle*, 31 N. H. 147.

The owner of a close is not obliged to fence against any cattle except such as are rightfully upon the adjoining land.—*Laurence v. Combs*, 37 N. H. 331.

Railroad corporations are not liable to the owners of lands adjoining their roads for damages committed on those lands by cattle wrongfully permitted by their owners to run at large in the highway, and thence escaping upon the railroad track, and from thence through defects of the fences of the railroad upon the lands of such adjoining owners.—*Chapin v. The Sullivan R. R.*, 39 N. H. 53.

Where a horse escapes from the close of A., where he rightfully is, into an adjoining close of B., through the fault of B. in taking down a sufficient division fence which A. is bound to maintain, B. is liable in trespass for turning the horse into the highway whereby he is lost.—*Roby v. Reed*, 39 N. H. 461.

An application to the fence-viewers may embrace the division of the fence, its sufficiency, and the limitation of time to build and repair it. The division of the fence and the adjudication upon its sufficiency and the limitation of time to repair it are distinct subjects and notice of both must be given. The findings of fence-viewers are final and conclusive where the law has been complied with.—*Fairbanks v. Childs*, 44 N. H. 458.

Where the fence between adjoining landowners has been divided throughout the whole length by the fence-viewers, one of the owners may lay part of the land on that line in common and be relieved from further contribution to maintain the fence there, even although that part of the fence had been assigned to him and he had built the fence. In such case the other owner will be entitled to a new division of the rest of the fence.—*Jones v. Perry*, 50 N. H. 134.

The fence-viewers ordered defendants to put their fence in repair according to law within fifteen days. Defendants not complying, plaintiff built the fence and the fence-viewers, upon notice, appraised the cost. Plaintiff sued to recover double the cost. *Held*, that there was a *prima facie* presumption that the fence-viewers made the appraisal upon the basis of their previous order.—*Hartshorn v. Schoff*, 51 N. H. 316.

The decision of a full board of three fence-viewers is not rendered invalid by the omission of one of them to take the oath prescribed by statute.—*Hartshorn v. Schoff*, 58 N. H. 197.

When, at a hearing before fence-viewers for appraisal of a fence, defendant makes an objection, but does not object to the location of the fence built for him by plaintiff on plaintiff's land not on the boundary line, but at the place where its construction would be most advantageous to defendant, defendant cannot object to the location in a suit brought for double the cost of the fence and fence-viewers' fees.—*Piper v. Piper*, 60 N. H. 98.

Facts directly within the provisions of the statute — statute construed.—*Jaques v. Benton*, 63 N. H. 232.

A party who maintains a partition fence in such a condition as to prevent the escape of domestic animals is not liable under the statute; but for an injury caused by the unsafe condition of the fence he is liable at common law. As where a colt became entangled and was lacerated in a barb-wire fence.—*Durgin v. Kennett*, 67 N. H. 329.

Neglect to make or repair a fence according to the division of fence-viewers does not render a party liable for the whole cost of the division.—*Roundy v. Smith*, 68 N. H. 69.

The statute declaring that any fence or other structure in the nature of a fence unnecessarily exceeding five feet in height, erected or maintained for the purpose of annoying the owner or occupant of adjoining property shall be deemed a private nuisance, held to be not an unconstitutional interference with the rights of private property.—*Horan v. Byrnes*, 72 N. H. 93.

FIREWARDS.

Election.—A chief fireward, or engineer, and one or more assistants, are chosen annually at the annual town meeting. If any town fails to elect such officers, or there is a vacancy, the selectmen discharge the duties, and have the powers of such offices until the same are filled by election, or appointment. C. 43, S. 25, 40.

Duties.—The firewards or fire engineers of the town constitute a board; they choose a clerk and adopt a badge of office. It is their duty to have at all times the control of all fire engines and apparatus designed or used for the extinguishment of fires in the town, and of all persons whose duty it is to aid in extinguishing fires.

They appoint the necessary firemen, whose warrants are required to be signed by the chief and the clerk. The firemen are organized into companies with such officers, and subject to such duties, and to meeting for drill as the firewards or engineers shall direct or approve, and shall, by night or day, under their direction, use their best endeavors to extinguish any fire in their town or the vicinity thereof. C. 115, SS. 1-4.

The chief fireward, or engineer, is required to keep or cause to be kept in order all apparatus provided by the town for the extinguishment of fires, and to cause all cisterns and sources of water prepared for the fire department to be fully supplied and kept in order. It is his duty to report annually to the town the condition of all fire apparatus under his care, and the amount expended for repairs thereon. *Ibid.*, S. 5.

The firewards, or engineers, are given full power and authority in the direction of the firemen and fire apparatus in all cases of extinguishment of fires within the town, and may call for aid or assistance from all persons in putting out fires. The major part of them present at any fire may cause any building or thing whatever to be pulled down, blown up, or removed, if they judge such action necessary to stop the progress of a fire, and any fireward, or engineer, may require assistance from any person present for that purpose. *Ibid.*, SS. 6-9.

They may establish such regulations respecting the kindling, guard-

ing, safe keeping, prevention, and extinguishment of fires, and for the removal of combustibles from any building, or place, as they shall think expedient, which shall be signed by the major part of them, recorded by the town clerk, and posted in two or more public places in the town thirty days before they shall take effect.

They may give written notice to the owner of any building deemed by them to be dangerous, to alter or repair the same, and if the repairs or alterations are not made within thirty days after notice, the owner or occupant is subject to penalty for such neglect.

The chief fireward is paid for his services such compensation as the selectmen think reasonable, and the bills for necessary repairs of the fire apparatus made by his direction, approved by him, shall be paid by the selectmen. *Ibid.*, SS. 12-15.

The provisions of this chapter as given above apply to any town in which apparatus for the extinguishment of fires is provided at the public expense, and firewards, or fire engineers, are duly elected or appointed. But the by-laws now in force in any town relating to the extinguishment of fires shall remain in force until repealed or superseded by a vote of the town. *Ibid.*, S. 20.

Investigation of Fires.—When property is destroyed by fire, it is the duty of the board of firewards or engineers, of towns having such officers to investigate the cause, circumstances, and origin thereof, and especially to examine whether it was the result of carelessness or design, such investigation to be begun within two days of the occurrence of the fire, exclusive of Sunday. They have the powers vested in justices of the peace to take testimony upon such inquest.

They are required to present to the clerk of the town for record by him a written statement of all the facts relating to the cause of such fire, the kind, value and ownership of property destroyed, and such other particulars as may be required. *Ibid.*, SS. 21, 22.

HEALTH BOARD.

The town board of health is appointed by the selectmen, and consists of three persons, selected with reference to their fitness for the office, and so appointed that the term of office of one member expires each year, and the members thereafter appointed hold office three years and until their successors are appointed and qualified. Whenever practicable, at least one member of the board should be a physician and a graduate of some legally incorporated medical college, in active practice in the town. Vacancies in the board are filled by the selectmen for the unexpired term. Acts of 1897, C. 45, S. 1.

HAY INSPECTORS.

The selectmen of each town in which bale or bundle hay is sold may, on the petition of ten or more legal voters of the town, annually appoint

one or more inspectors of bale or bundle hay, who shall be sworn, and are subject to removal by the selectmen. C. 126, S. 6.

Detailed instructions as to the method of inspecting, branding, or marking bales or bundles of hay are given in the statutes. Each inspector is required to provide himself with proper seals and other suitable instruments for the performance of his duties, and his fees are fixed by law. *Ibid.*, SS. 4, 7, 8, 9, 10.

HIGHWAY AGENTS.

Election.—At the annual election each town is required to elect by ballot one or more, not exceeding three, highway agents who, under the direction of the selectmen shall have charge of the construction and repair of all highways and the bridges within the town, and shall have authority to employ the necessary men and teams and purchase timber, plank, and other material for the construction and repair of highways and bridges; and they may remove gravel, rocks, or other material from one part of the town to another, doing no damage to adjoining land, for the purpose of grading or otherwise repairing the same.

Such agents shall be sworn to the faithful discharge of their duty, give bonds to the satisfaction of the selectmen, and be responsible to them for the expenditure of money and the discharge of their duties generally. The compensation of such agents is fixed by the town, or selectmen, and they are required to render to the selectmen monthly statements of their expenditure, and receive no money from the treasurer except on the order of the selectmen. Acts of 1893, C. 29, S. 3.

No person can at the same time hold the office of highway agent and selectman. *Ibid.*, S. 4.

Vacancy.—If a town fails to elect at its annual election, or a person chosen as road agent fails to qualify before the first day of April, the office shall be deemed vacant, and shall be filled by the selectmen by appointment, and they may fill such vacancy when the same may be caused by death, or otherwise, to complete the unexpired term. *Ibid.*, S. 5.

Said agent shall keep accurate accounts showing in detail all moneys received by him, from whom and when received, and all moneys paid out by him, to whom and for what purpose. He shall settle his account before the fifteenth day of February, annually, and the same shall be printed in the annual town report in detail. *Ibid.*, S. 6.

Highways and Sidewalks.—The highway agent, or agents, have charge and supervision of the highways and sidewalks in their towns, and may control or prohibit the placing or using therein of any carriages, sleds, lumber, wood, or any other obstruction, the digging up of the ground or the doing of any act by which the public travel may be incommoded, and shall require or provide for the securing by railings

or otherwise of any dangerous place near the line of any highway, or sidewalk, subject to the approval of the selectmen. Acts of 1895, C. 111, S. 1.

Loose Stones Removed.—Every highway agent is required to cause all loose stones lying within the travelled part of every highway in his town to be removed at least once in every sixty days from the first of May to the first of October in each year, and stones so removed shall not be left in the gutter, nor upon the side of the travelled part of the highway, so as to be liable to work back or be brought back into the travelled part thereof. Acts of 1903, C. 75, S. 1.

HIGHWAYS AND BRIDGES.

See "Selectment;" "Highway Agents."

JUNK DEALERS.

See "Selectmen."

JURORS.

See "Town Clerk."

LIBRARY TRUSTEES.

Every town is required at its annual meeting, or at a legal town meeting, duly warned for that purpose, to elect a board of library trustees, except in cases where a free public library has been acquired by the town by some donation or bequest containing other conditions or provisions for the election of its trustees, which conditions have been accepted or agreed to by vote of the town. Acts of 1895, C. 118, S. 4.

Such board of trustees shall consist of any number of persons divisible by three, which the town may decide to elect. At the first election, one-third of the number shall be chosen for one year, one-third for two years and one-third for three years, and thereafter one-third of the number shall be chosen each year for the term of three years, or until others are chosen in their places. The board shall choose a chairman and secretary of their own number, annually, and vacancies in the board shall be filled by the selectmen until the next annual town meeting. *Ibid.*, S. 5.

Duties.—The trustees have the entire custody and management of the free public library and of all property of the town relating thereto, and all money raised or appropriated by the town; and all money or property that the town may receive by donation from any source, or by bequest, for such library shall be placed in the care and custody of the board of trustees, to be expended or retained by them for the support and maintenance of the library in accordance with the conditions of such donation or bequest.

They are required to make a report to the town at each annual town meeting of all their receipts and expenditures, and of all the property of the town in their care and custody. They shall also make a report annually to the board of library commissioners. *Ibid.*, SS. 6, 7.

Where a city accepts a gift of money for the erection of a public library building, on condition that it shall provide a suitable lot of ground, and that the location shall be selected by a committee previously appointed for a similar purpose, the powers of the committee are not limited by the terms of their original appointment, but depend upon the contract made with the donors in accepting the gift.—*Attorney-General v. Nashua*, 67 N. H. 478.

MEASURERS OF WOOD AND BARK.

One or more measurers of wood and bark may be elected by a town at the annual town meeting. C. 43, S. 25.

It is the duty of measurers of wood and bark to measure any wood or bark whenever requested, and to give a certificate thereof. Their fees are fixed by law and are paid by the persons who employ them. C. 126, S. 15.

The dimensions of cord-wood, as prescribed by statute, are either four feet, three feet, or two feet long, including half the kerf; and a quantity measuring eight feet in length, four feet in width and four in height, constitutes a cord, when well and closely laid together. *Ibid.*, S. 14.

MILITIA.

See "Selectmen."

MILK INSPECTORS.

The selectmen of towns may annually appoint one or more persons to be inspectors of milk, skim-milk, and cream, under the same provisions and conditions as agents are appointed by boards of health. C. 127, S. 2.

The inspectors are authorized to enter places where milk, skim-milk, or cream are stored or kept for sale, and into and upon carriages used for the conveyance thereof, and may take such samples of milk, skim-milk, or cream as they may deem necessary, upon payment of the current price therefor. They may examine such samples, and if they have reason to believe that any such milk, skim-milk, or cream is adulterated, they shall cause specimens thereof to be analyzed or otherwise satisfactorily tested, and shall make a record of the result of the analysis or test. *Ibid.*, S. 6.

It is the duty of inspectors of milk to make complaints for violations of the law, whenever any one furnishes to them satisfactory evidence thereof, and to prosecute the same. *Ibid.*, S. 23.

MODERATOR.

At every biennial election, a moderator is chosen by ballot by a plurality of votes, who holds office from the close of the meeting at

which he is chosen until the close of the meeting at the next succeeding biennial election. C. 42, S. 1.

Vacancy.—In case of a vacancy in the office, a moderator shall be appointed by the board of supervisors of check-lists of the town where such board exists, or by the selectmen of the town where there is no board of supervisors of check-lists. *Ibid.*, S. 2.

If the moderator is absent from any meeting, or is unable to perform his duties, a moderator *pro tempore* shall be appointed as provided in section 2. *Ibid.*, S. 3.

Whenever there is a vacancy in the office, or the moderator is absent from a meeting, or is unable to perform his duties, the chairman of the board of supervisors, or in his absence one of the other members of the board, in the order of their election, or, if no supervisor is present, the town clerk, shall preside until a moderator is chosen, and shall have the powers and perform the duties of moderator. *Ibid.*, S. 4.

Duties.—The moderator presides in the town meeting, regulates the business thereof, decides questions of order and makes a public declaration of every vote passed, and may prescribe rules of proceeding, but such rules may be altered by the town.

When any vote, other than by ballot, declared by the moderator or other officer presiding, shall immediately, and before any other business is begun, be questioned by seven or more of the voters present, the moderator, or other officer presiding, shall make the vote certain by a poll of the voters.

No person shall speak in any meeting without leave of the moderator, and all persons shall be silent at the desire of the moderator, on pain of forfeiting one dollar for each offense, for the use of the town. *Ibid.*, SS. 5, 6, 8.

If any person shall conduct in a disorderly manner, and, after notice from the moderator, persists therein, or shall in any way disturb the meeting or wilfully violate any rule of proceeding, the moderator may command any constable or police officer, or any legal voter of the town, to remove such disorderly person from the meeting, and detain him until the business is finished. *Ibid.*, S. 9.

An action on the case will not lie against the moderator of a town meeting for refusing to receive the vote of a person legally qualified to vote, without showing malice express or implied.—*Wheeler v. Patterson*, 1 N. H. 88.

The moderator has the power to prescribe rules for the government of the meeting over which he presides, subject to be altered by the town. The rules of parliamentary law, so-called, are not in force for the government of town meetings, except so far as prescribed by the moderator, subject to alteration by the town.—*Hill v. Goodwin*, 56 N. H. 441.

An arithmetical error in the count and declaration of votes for senator in town meeting may be corrected by the moderator in a supplementary public declaration before the close of the meeting, but not by the clerk in his record and return, without such action by the moderator.—*Felker v. Chesley*, 66 N. H. 381.

The moderator cannot receive a ballot at an election offered within the guard-rail after the polls have been closed, and while the ballots are being counted.— *Attorney-General v. Folsom*, 69 N. H. 556.

MUNICIPAL BONDS.

In chapter 43, section 1, of the Acts of 1895, authorizing municipal corporations to issue bonds, the term "municipal corporation" is declared to mean town, city, school district, village district, and village precinct; and the term "governing board" means the selectmen of the town, the commissioners of a village district or precinct, and the school board of a school-district; and the word "may" shall be directory and not mandatory. Acts of 1895, C. 43, S. 1.

Every municipal corporation, for any purpose for which it can raise money or incur debt, may issue the bonds of such corporation, which shall be payable within twenty years from the time of their issue and carry interest, payable semi-annually, at a rate not exceeding six per cent per annum. *Ibid.*, S. 2.

No bonds shall be issued by any municipal corporation, which will increase the net debt of such corporation to an amount exceeding five per cent of the value of the taxable property therein, as last appraised for the purpose of assessing taxes on such corporation. *Ibid.*, S. 9.

OVERSEERS OF THE POOR.

Election.— Any town, at the annual meeting, may choose, by major vote, one or more overseers of the poor. If any town fails to choose overseers of the poor or there is a vacancy in such office, the selectmen shall discharge the duties and have the powers of such officers until the same are filled by election or appointment, as provided by law. C. 43, SS. 25, 40.

Pauper's Support.— Whenever a person in any town shall be poor and unable to support himself, he shall be relieved and maintained by the overseers of the poor of such town, whether he has a settlement there or not. C. 84, S. 1.

The statute contemplates no claim by the town against a husband for expenditures in behalf of his wife as a pauper. It is that the power of towns is only coextensive with their duties. That they have power to do all that the statute makes it their duty to do and nothing more. This is undoubtedly the case.— *Rumney v. Keyes*, 7 N. H. 571.

To entitle a person to relief as a pauper, he need not be wholly destitute; but is deemed a pauper when he cannot relieve his immediate wants without disposal of property that is essential and which, if parted with, must be immediately replaced to enable him to live.— *Poplin v. Hawke*, 8 N. H. 305.

One selectman cannot alone charge the town with relief to a pauper, there being at the time no existing duty requiring the action of the selectmen.— *Woods v. Dennett*, 9 N. H. 55.

A prisoner confined in jail upon an execution may be a pauper within the intent of the statute for relief of the poor; and in such case the selectmen are bound to relieve him and may recover of the town in which he has his settlement.— *Amherst v. Hollis*, *Ibid.* 107.

No action will lie in favor of a town against a pauper to recover moneys expended by such town for his support, even though the pauper afterwards come into possession of property.—*Charlestown v. Hubbard*, 9 N. H. 195.

No claim can be sustained against a town for relief of paupers except through the action of the overseers of the poor of such town, or when its poor standing in need of relief reside in some other town and are supported by the overseers of the poor of such town.—*Otis v. Strafford*, 10 N. H. 352.

If one is on the town as a pauper, and the value of his labor performed for the town exceeds the amount expended for his relief, he cannot recover for the excess in an action against the town for work and labor.—*Abbott v. Fremont*, 34 N. H. 432.

Where a person is found in any town of this state poor and unable to support himself, the overseers of the poor of such town are bound to furnish adequate immediate relief.—*Moultonborough v. Tuftonborough*, 43 N. H. 316.

Charities and Correction, State Board of.—Overseers of the poor shall report to the state board of charities all minors cared for by them under this act, with copies of the contracts made, and such other information as may be required by such board. Acts 1895, C. 116, S. 6.

Any overseer of the poor who shall unreasonably neglect to comply with the requirements of this act shall be removed from office by the supreme court, or a justice thereof, upon petition of the state board of charities, upon proof thereof being made, and after hearing upon said petition. *Ibid.*, S. 5.

Minors, Apprenticed.—The overseers shall set to work, in the work house or elsewhere, or bind out as apprentices, all children residing in their respective towns who are not employed in some lawful business, and whose parents are unable or neglect to maintain them — males until the age of twenty-one years, and females until the age of eighteen years.

Such contract shall be in writing, shall be made equitably, and as much as may be for the interest of the persons bound out, and shall provide that they shall be instructed to read, write and cipher, and to do such work or business as is suitable to their condition. The overseers shall inquire into the treatment of all persons so bound out, shall see that the contract is fulfilled, and that all wrongs or injuries are redressed. C. 84, SS. 5, 6.

Overseers of the poor in another state have no authority, as such to bind out poor children as apprentices in this state.—*Dyer v. Hunt*, 5 N. H. 401.

The recitals of fact contained in the indenture of an apprentice are evidence against the master of those facts. Overseers of the poor, in binding out paupers as apprentices, act as public officers and not as agents of the town. They have no power to release or discharge any of the stipulations of the indentures.—*Glidden v. Unity*, 30 N. H. 104.

Minors, Dependent, Support.—It shall be the duty of the overseers of the poor of towns liable for the support of dependent minors and of county commissioners of counties liable for such support, to procure such minors supported at some orphan asylum or home, or with some private family or families of good repute. Acts 1895, C. 116, S. 2.

It shall be the duty of overseers of the poor and county commissioners, as soon as practicable, to find permanent homes for all such orphan

minors, and make contracts for their education and support during minority, and all such contracts shall be subject to rescission by the state board of charities, whenever the interest of such minors shall make it necessary. *Ibid.*, S. 3.

Minors, Sent to Orphans' Homes.—The overseers of the poor in any town may send to the New Hampshire Orphans' Home, or to any orphans' home in this state, or other institution devoted to or suitable for the care, protection, and education of children, upon such terms as may be agreed upon, all children residing in their respective towns who are not employed in some lawful business, and whose parents are unable or neglect to maintain them; but, in the selection of such home or institution, said overseers shall give the preference to that home or institution that is conducted by or under the auspices of the church or religious denomination of which the child or the child's parents are members; and said home or institution shall thereupon have the same authority in respect to such children as is now vested in overseers of the poor. Acts 1893, C. 61, S. 1.

Bound Out.—The overseers of the poor in any town may, by written contract, bind out to labor for a term not exceeding one year, or employ in their workhouse, every person residing in the town who lives idly and pursues no lawful business, and who is poor and stands in need of relief, or whose family, standing in need of relief, is supported by such town, and shall take his wages and appropriate the same to the maintenance of such person, his family, or his children. C. 84, S. 4.

Where selectmen bound out a poor female child by indenture as an apprentice till she should arrive at the age of eighteen years, and covenanted to pay the person to whom she was thus bound \$39.00, it was *held*, that another town in which the child was settled was not liable to refund the money paid under the indenture.—*Rumney v. Ellsworth*, 4 N. H. 138.

The mother of a minor was insane and poor and was supported by the town of M. for two years. Her son, a minor, labored for one L. in whose employ he earned more than sufficient for his support and at no time applied for aid to the town. *Held*, that he was not a pauper, and could not be treated as such, and neither his mother nor the town was entitled to his earnings.—*Jenness v. Emerson*, 15 N. H. 486.

Overseers of the poor in binding out paupers as apprentices act as public officers and not as agents of the town. They have no power to release or discharge any of the stipulations of the indentures.—*Glidden v. Unity*, 30 N. H. 104.

Paupers, Burial of.—If a pauper shall die in any town, the overseers of the poor shall cause him to be decently buried at the expense of the town. *Ibid.*, S. 8.

Returned to Their Homes.—If a pauper who is temporarily in a town not his home shall apply to the overseers of the poor to be returned to his home, they may cause him to be returned at the expense of the town, or they may set him to work in the workhouse or elsewhere, or may bind him out not exceeding the time that will be required for him

to earn sufficient money to defray the expenses of such return, and may cause him to be returned to his home with the money so earned and any additional sum from the town treasury that may be necessary for the purpose. *Ibid.*, S. 7.

Paupers, Claims Against County.—Whenever a county pauper shall be relieved, returned to his home, or buried at the expense of a town, the overseers of the poor may present an account of all moneys so expended, accompanied by proper vouchers, to the commissioners of the county in which the town is situated; and the commissioners, subject to the limitation contained in section two of this chapter, shall allow such sum as they shall think reasonable, and give an order on the county treasurer for its payment, unless the officers of the town have failed to comply with the requirements of sections four and five of this chapter. C. 85, S. 3.

An order of county commissioners allowing a claim of a town against the county for the support of a pauper, so long as it is not reversed or modified, has the effect of a judgment in favor of the town against the county.—*Salisbury v. County*, 59 N. H. 359.

The finding of commissioners upon the question of a pauper's settlement may be set aside for fraud or mistake.—*Concord v. Merrimack Co.*, 60 N. H. 521.

The disallowance of a town's pauper claim by the county commissioners authorizes a submission to the court of the matters in dispute.—*Plymouth v. Grafton Co.*, 68 N. H. 361.

The account and vouchers shall be thus presented within thirty days after the expenditures were made, if the county commissioners shall require it. *Ibid.*, S. 4.

The overseers of the poor shall take and transmit to the county commissioners, within ten days after the expenditures were made, the affidavit of every pauper on whose account they were made, if the pauper is capable, otherwise of some well-informed person, as to the pauper's age, place of birth, places of residence, time of residence in each place, and the time when and the place where he or any of his family have been relieved or supported. *Ibid.*, S. 5.

Paupers, County, Support by Towns.—It shall be the duty of the county commissioners to contract with the overseers of the poor of a town for the support of any county paupers therein who have resided for a long time or have local associations in such town and desire to remain there, if it is thought best to do so, and the cost of such support will not exceed one dollar and fifty cents a week for each pauper. C. 85, S. 6.

The county commissioners may bind out, or authorize the overseers of the poor of any town to bind out or employ, any person chargeable or liable to be chargeable to the county, in the same manner as such overseers might do in case of a person chargeable to the town. *Ibid.*, S. 7.

SETTLEMENTS.

A legal settlement may be gained by any person in any town, so as to oblige the town to support such person if poor and unable to support himself, in the manner following and not otherwise: C. 83, S. 1.

Married Women.— A married woman shall have the settlement of her husband, if he has or shall acquire any within this state; otherwise her settlement at the time of her marriage shall continue. *Ibid.*, Cl. 1.

No person can gain a settlement in a place not incorporated.—*Hillsborough v. Deering*, 4 N. H. 86.

An alien pauper having no settlement in this state is entitled to support in the town where his wife has a settlement; and such town is liable to any other town by which such assistance is rendered, although such town has its ultimate remedy against the county.—*So. Hampton v. Hampton Falls*, 11 N. H. 134.

A woman who gained the settlement of her husband lost her own; nor was it restored by the law of July, 1841.—*Madbury, Ex parte*, 17 N. H. 569.

By act Dec. 16, 1828, upon any division of a town the settlement of persons then resident elsewhere, but having a legal settlement in the town divided, followed their former dwelling-places:— if those were dissevered and annexed to another town, their settlement was thereby transferred to that other town.—*Barnstead v. Alton*, 32 N. H. 245.

A married woman whose husband has no settlement may acquire one in her own right by the possession of property, as if she were sole.—*Andover v. Merrimack Co.*, 37 N. H. 437.

The marriage of a pauper, whose settlement is in controversy, or that of any ancestor from whom the settlement is alleged to have been derived, may be impeached by any interested town or third party by showing that it was fraudulently obtained, or that the parties were incapable of legally making such a contract.—*Farmington v. Somersworth*, 44 N. H. 589.

A settlement acquired by a woman through marriage is not lost by a divorce in favor of her husband.—*Ossipee v. Carroll Co.*, 65 N. H. 12.

Legitimate Children.— Legitimate children shall have the settlement of their father, if any he has within this state; otherwise the settlement of their mother, if any she has. *Ibid.*, Cl. II.

The acts of May 2, 1719, and January 16, 1771, required that the doings of selectmen and others warning out persons from a town should be returned to the court of quarter sessions within one year from the time such persons came to reside in the town. The warning of a person in conformity with the statute prevented the person warned from gaining a settlement, and all who derived a settlement from him.—*Northwood v. Durham*, 2 N. H. 242.

As a rule, children are considered as emancipated when they arrive at the age of twenty-one years. But if by reason of infirmity of body or mind a child is compelled to remain with a parent after that age, so long as he remains, he is not to be considered as emancipated.—*Oxford v. Rumney*, 3 N. H. 331.

An infant not emancipated, having a father living, could gain no settlement by residence in a town under statute 1791 and prior laws.—*Farnsworth v. New Market*, 3 N. H. 472.

An infant gained a settlement with her father at the time a town was incorporated, although not then residing with him.—*Salisbury v. Orange*, 5 N. H. 348.

The presumption is that children under twenty-one years of age are unemancipated, and that above that age they are emancipated.—*Fitzwilliam v. Troy*, 6 N. H. 166.

Where a settlement is derived by descent, evidence of the marriage of the father is essential. A settlement once gained is never lost except by gaining another in some other town in the state.—*Landaff v. Atkinson*, 8 N. H. 532.

When a parent is a pauper, and is maintained by the town, he is not entitled to the earnings of a minor child who is not a pauper.—*Jeness v. Emerson*, 15 N. H. 486. See *Merrimack v. Hillsborough*, 19 N. H. 550.

A daughter who had acquired the settlement of her mother does not lose it by marriage with a man who has no settlement.—*Hopkinton v. Warner*, 53 N. H. 473.

Illegitimate Children.— Illegitimate children shall have the settlement of their mother at the time of their birth, if any she has within the state. *Ibid.*, Cl. III.

Before the statute of January 1, 1796, an illegitimate child had a settlement in the place of its birth; after the age of seven, it could acquire a new settlement in its own right by a year's residence in a different town.—*Bow v. Nottingham*, 1 N. H. 260.

A minor appointed to the office of hogreeve acquires thereby a settlement in the town.—*Bath v. Haverhill*, 2 N. H. 555.

Under statute January 1, 1796, illegitimate children retained the settlement of their mothers, at the time of their birth, and did not change their settlement with the mothers, if the latter gained a new one.—*Dorchester v. Deerfield*, 3 N. H. 316.

Prior to statute January 1, 1796, an illegitimate child had its settlement at the place of its birth and could not acquire a new settlement by a residence in another town while under the age of seven years.—*So. Hampton Falls v. Hampton Falls*, 11 N. H. 134.

An illegitimate child had the settlement of his mother in Hollis. His son married and deserted his family, leaving a wife and six minor children paupers. Relief was given them by the town of Merrimack, which sued Hillsborough for reimbursement for the supplies furnished. *Held*, that the minors had the settlement of their grandfather in Hollis.—*Merrimack v. Hillsborough*, 19 N. H. 550.

Residents.— Any person of the age of twenty-one years, having real estate of the value of one hundred and fifty dollars or personal estate of the value of two hundred and fifty dollars in the town where he dwells and has his home, and paying all taxes duly assessed on him and his estate for four years in succession, shall thereby gain a settlement therein. *Ibid.*, Cl. IV.

One gaining a settlement by having real estate of the value of \$150 must have at least a freehold either by lawful title or disseizin.—*Charlestown v. Acworth*, 1 N. H. 62.

A person who has only a right in equity to redeem land in the town where he dwells cannot gain a settlement there by paying all the taxes assessed against him for four years unless such right to redeem be of the value of \$150.—*New London v. Sutton*, 2 N. H. 401.

Being taxed is not essential to the gaining of a settlement.—*Rochester v. Chester*, 3 N. H. 349.

In order to gain a settlement under the fourth clause of the statute, a person must own real or personal estate of the value prescribed for the full term of four years.—*Wakefield v. Alton*, 3 N. H. 378.

The value of the interest in real estate owned by the person must amount to \$150.—*Poplin v. Hawke*, 8 N. H. 124.

A right in equity to redeem land mortgaged is real estate within the meaning of the statute.—*Hebron v. Centre-Harbor*, 11 N. H. 571; *Pembroke v. Allenstown*, 21 N. H. 107.

It is sufficient under the fourth mode of gaining a settlement, to prove the party in possession of land, that being *prima facie* evidence of seizin.—*Dalton v. Bethlehem*, 20 N. H. 505.

An obligation to support a man and his family although secured by mortgage upon real estate is neither real nor personal estate within the meaning of the statute.—*Gilsum v. Sullivan*, 36 N. H. 368.

The interest of a husband in the reversionary estate of his wife is not real estate under the statute.—*Orford v. Benton*, *Ibid.* 395.

A person entitled to a distributive share of a deceased person's estate of sufficient amount will gain a settlement thereby though there has been no decree of distribution, the other requirements of the law being complied with.—*Andover v. Merrimack Co.*, 37 N. H. 437.

A settlement is not affected by showing that the taxes paid were illegally assessed.—*Francetown v. Deering*, 41 N. H. 438.

The four years' residence required need not be political or calendar years. They may begin at any season of the year, and end four years from that time.—*Hillsborough v. Londonderry*, 46 N. H. 11.

A person cannot gain a settlement in one town by residence and payment of taxes, or by derivation, while he is supported as a pauper by another town. Nor can a father or mother of an unemancipated child acquire a settlement by residence and payment of taxes while he is a member of their family and is supported as a pauper at their request by another town.—*Croydon v. Sullivan*, 47 N. H. 179.

Actual payment of taxes must be proved to establish a settlement under the fourth mode.—*Haverhill v. Orange*, 47 N. H. 273; *Lisbon v. Lyman*, 49 N. H. 553.

The person must in some legal sense be the payer of the taxes duly assessed on his estate.—*Weare v. Deering*, 58 N. H. 206.

The assessor's valuation of the estate is not conclusive.—*Derry v. Rockingham Co.*, 62 N. H. 485.

When Town is Incorporated.—Any person dwelling and having his home in any unincorporated place at the time when the same shall become incorporated into a town, shall thereby gain a settlement therein. *Ibid.*, Cl. V.

A person resident in the territory incorporated as a town at the time of its incorporation gains a settlement, though no meeting of the town is held before his removal.—*Berlin v. Gorham*, 34 N. H. 266; *Salisbury v. Orange*, 5 N. H. 348.

When Towns are United.—If two or more towns shall be incorporated into one town, any person having his settlement in either of such towns shall have his settlement in the town so incorporated. *Ibid.*, Cl. VI.

When Town is Divided.—Upon the division of any town, any person having his settlement therein shall thereafter have his settlement in that town in which his last dwelling-place shall have been. *Ibid.*, Cl. VII.

Where a single woman labored for wages in one town when she became of age and her parents lived in another town, it was held that she had her settlement in the town where she worked.—*Guilford v. Gilmantown*, 1 N. H. 194.

Where a pauper actually supported by an old town resided in that part which was incorporated into a new town it was held that he gained no settlement in the new town.—*New Chester v. Bristol*, 3 N. H. 71.

When a part of an old town is incorporated as a new town, a pauper residing in the new town gains a settlement there by virtue of the incorporation.—*Mason v. Alexandria*, 3 N. H. 303.

An act severing a town does not give a settlement to one as a pauper who had not one before.—*Gilford v. Gilmantown*, 20 N. H. 456.

By the act of December 16, 1828, upon any division of a town, the settlement of persons then resident elsewhere, but having a legal settlement in the

town divided, followed their former dwelling-places;—if those were dis-severed and annexed to another town, their settlement was thereby transferred to that other town.—*Barnstead v. Alton*, 32 N. H. 245.

Under this clause an emancipated minor may have a different dwelling-place from that of his parents.—*Lisbon v. Lyman*, 49 N. H. 553.

Change of Town Lines.—If the dwelling-house or home of any person residing but having no settlement in any town shall by act of law fall within the limits of any other town, such person shall acquire a settlement in such last-named town in the same time and manner as he would have done in the former town if no such change had taken place. *Ibid.*, Cl. VIII.

Residents Taxed Seven Years.—Any person of the age of twenty-one years who shall have resided in any town in this state, and being taxed for his poll for seven years in succession, shall have paid all taxes legally assessed on his poll and estate during that term, and any unmarried woman of the age of twenty-one years who shall have resided in any town in this state seven years in succession, shall have paid all taxes legally assessed on her estate during that term, shall thereby gain a settlement in such town. *Ibid.*, Cl. IX.

In order to gain a settlement under the ninth mode a person must be actually taxed each year for his poll.—*Burton v. Wakefield*, 4 N. H. 47; *Dalton v. Bethlehem*, 20 N. H. 505; *Weare v. New Boston*, 3 N. H. 203; *Henniker v. Weare*, 9 N. H. 573.

In order to gain a settlement under this mode it must be shown that the tax was actually paid.—*Jaffrey v. Cornish*, 10 N. H. 505; *Lisbon v. Bath*, 21 N. H. 319.

The payment of taxes for seven successive years is not sufficient, without residence for the whole of that term.—*Tamworth v. Freedom*, 17 N. H. 279.

The lapse of twenty years from the time of assessment of taxes against a person will raise a presumption of their payment, notwithstanding he died within about a year after the assessment.—*Colebrook v. Stewartstown*, 28 N. H. 75; *Hopkinton v. Springfield*, 12 N. H. 328.

Poverty and inability to pay taxes is a good cause for selectmen to abate them.—*Briggs' Petition*, 29 N. H. 547.

It must appear that the tax is assessed against the person individually and that payment is made by him personally or by some one at his request.—*Springfield v. Enfield*, 30 N. H. 71.

It matters not whether the tax is illegal. If the illegal tax is void, there is a failure to be taxed; if only voidable, a failure to pay; if a part of the tax is legal, it is enough to pay that part.—*Berlin v. Gorham*, 34 N. H. 266.

Lapse of time raises no presumption of the assessment of taxes.—*Pittsfield v. Barnstead*, 38 N. H. 115.

Neglect to pay a highway tax will prevent the gaining of a settlement although payment had never been demanded.—*Bradford v. Newport*, 42 N. H. 338.

It is immaterial that a person was taxed by a wrong name, if he was the one meant, and paid the tax.—*Canaan v. Grafton Co.*, 64 N. H. 595.

It is not necessary that a person be taxed for anything but his poll; if, however, he is taxed for property also, he must pay that tax as well as the poll-tax.—*Warren v. Wentworth*, 45 N. H. 564.

Married Women.—Any married woman may gain a settlement in her own right by the ownership of property and the payment of taxes legally assessed thereon, the same as if unmarried. *Ibid.*, Cl. X.

Minors.—A minor, if emancipated, shall not take an after-acquired settlement from the parents, but may acquire one in his own right whenever settlement depends upon the incorporation, division, or union of towns, or on the change of town lines. *Ibid.*, Cl. XI.

In deciding whether a minor was emancipated, the jury are not to take a legal presumption that minors are not emancipated as an element of evidence to be weighed with the testimony.—*Lisbon v. Lyman*, 49 N. H. 553.

A woman who acquired the settlement of her mother did not lose it by her own subsequent marriage with a man who had no settlement.—*Hopkinton v. Warner*, 53 N. H. 468.

The marriage of a female infant prevented her taking an after-acquired settlement of her father.—*Fremont v. Sandown*, 56 N. H. 300.

Relinquishment by a parent of a minor child's earnings under a misapprehension that the law emancipates the child at the age of eighteen, is not of itself an emancipation of the child.—*Merrimack Co. v. Jaffrey*, 58 N. H. 426.

Minors, Emancipated.—A minor shall be emancipated, within the meaning of this chapter, by the death or permanent insanity, or confinement in the state prison of this state of both parents, or of the father only, and the subsequent marriage of the mother; by the marriage of the minor; by his having his time given him; and whenever the right of his custody, control, and services shall, by indenture or other instrument under seal, be transferred to a third person until twenty-one or for a term of years, unless such right shall be again actually resumed by the parent and the minor shall become a part of his family. *Ibid.*, Cl. XII.

Minors; Divorced Parents.—In case of a divorce, the minor children shall follow the after-acquired settlement of the parent entitled to their legal custody, so long as such right continues, unless otherwise provided by law; and when neither parent has a right to the control and services of such children, they shall be considered emancipated. *Ibid.*, Cl. XIII.

Settlements, General Provisions.—No person shall gain a settlement by birth in any town in which neither of his parents then has a settlement.

The legal settlement of any person born before the marriage of his parents, and before the third day of July, eighteen hundred and sixty, shall not be changed by the subsequent intermarriage of his parents.

No person shall have a home for the purpose of gaining a settlement while assisted as a pauper.

The word "real estate," in this chapter, shall include lands, tenements, hereditaments, and all rights thereto and interests therein. C. 83, SS. 2-5.

No town is liable for the support of any person unless he, or the person under whom he derives his settlement, has wholly gained a settlement therein during the ten years preceding the last date of application for support; *provided* that no person having a settlement in any town in this state upon arriving at the age of seventy years shall lose that settle-

ment on account of being exempt by law from paying a poll-tax, if he still resides in said town. *Ibid.*, S. 6.

A settlement gained by an ancestor under the provisions of the act of January 1, 1796, still in force, was not affected by the act of 1841.—*Gilford's Petition*, 20 N. H. 278.

A woman acquired her husband's settlement by their intermarriage, and retained it until it was lost by operation of the act of 1841.—*Barnstead v. Alton*, 32 N. H. 245.

The effect of the statute of July 3, 1841, was to abolish all settlements of paupers gained under laws passed prior to January 1, 1796, and the consequences of those settlements as affecting the liability of towns.—*Pittsfield v. Barnstead*, 38 N. H. 115.

Where a settlement of the pauper in 1858 was in issue, it was held that the person under whom he claimed to derive his settlement must have gained a settlement under some law passed since December 31, 1795.—*Chester v. Plaistow*, 43 N. H. 542.

The settlements in new towns formed of parts of old ones are to be regarded as continuations of the old ones, resulting from an apportionment between the parts of the burthen which before was common to the whole.—*Strafford v. Strafford*, *Ibid.*, 606.

Every settlement continues until a new settlement is gained in this state; and upon gaining such new settlement any former settlement is lost. *Ibid.*, S. 7.

When a pauper has once gained a settlement in this state, it is not lost by acquiring a settlement in another state.—*Hanover v. Weare*, 2 N. H. 131; *Peterborough v. Lancaster*, 14 N. H. 382.

A settlement is lost only by gaining a legal settlement in another town in this state.—*Landaff v. Atkinson*, 8 N. H. 532.

A settlement gained by a woman through marriage is not lost by divorce in favor of her husband.—*Ossipee v. Carroll Co.*, 65 N. H. 12.

No settlement partially gained is considered to have been interrupted or defeated by the repeal of any former statute by a new statute containing the same provisions for acquiring a settlement. *Ibid.*, S. 8.

Records and Reports.—Overseers of the poor shall keep full and accurate records of the paupers fully supported, the persons relieved and partially supported, and the travelers and vagrants lodged at the expense of their respective towns, together with the amount paid by them for such support and relief, and said overseers shall make an annual return of the number of said persons supported and relieved, with the cost of such support and relief, to the state board of charities on or before the first day of October in each year, on blanks furnished by said board. C. 43, S. 12.

PAUPERS.

See "Overseers of the Poor."

PETROLEUM INSPECTORS.

The selectmen of every town of more than fifteen hundred inhabitants and of every town having a less number of inhabitants upon the written application of five or more citizens therefor, shall appoint annually one

or more suitable persons not interested in the sale of crude petroleum, or in the sale and manufacture of petroleum, earth-rock oil or any of their products, or who is not an employee of any person so interested, to be inspectors thereof in such town, and shall fix their compensation, to be paid by persons requiring their services, and who before entering upon their duties shall be duly sworn. C. 126, S. 25.

No person shall sell or keep for sale, or in storage, any crude or refined petroleum, naphtha, kerosene, earth-rock, machinery, or illuminating oil in a town, without having the same inspected and approved by an authorized inspector. *Ibid.*, S. 34.

It is not the duty of an inspector of kerosene oil to inspect oil when not requested to render that service, and he cannot recover for an inspection made without the defendant's request and against his objection.—*Hanson v. Oil Co.*, 67 N. H. 201.

POLICE, SPECIAL.

The selectmen of the town, when they deem it necessary, may appoint special police officers, one of whom may be superintendent, and they shall continue in office during the pleasure of the selectmen, or until their successors are chosen or appointed. Such appointment shall be in writing, under the hands of the selectmen, and recorded, with a certificate of the oath of office thereon, by the town clerk.

The police officers of a town may make regulations, subject to the approval of the selectmen, for the stand of hacks, drays and carts in any street, lane or alley; for the height and position of any awning, shade or fixture in front of or near a building; and respecting any obstruction in any street, lane, or alley, and the smoking of any cigar or pipe therein, or in any stable or other outbuilding; and for determining the time of night at which saloons, eating-houses and restaurants shall be closed, and prohibiting the keeping open such places on the Lord's day.

Such regulations do not take effect until approved by the selectmen, and, together with such approval, have been recorded by the town clerk, nor until they have been published in some newspaper printed in the town, or have been posted in two or more public places in the town. C. 249, SS. 1, 2, 5, 6.

One who has received what purports to be an appointment to an office which is supposed by him to be valid is an officer *de facto*, and his title cannot be questioned collaterally.—*State v. Barnard*, 67 N. H. 222.

POUND-KEEPER.

Towns are required to establish and maintain a public pound, and may choose annually at the annual town meeting a pound-keeper to take charge of such pound. His duties are prescribed, and the regulations for the use of the pound and for the impounding of swine, neat cattle, horses, sheep or other creatures found going at large or doing damage

on public highways, or private grounds, are set forth in detail in the statutes. C. 43, S. 25; C. 144, S. 121.

The statute of 1791 provided that every town in the state should make and maintain a good and sufficient pound, in default of which it should forfeit and pay to any person who should sue for the same, the sum of ten pounds and the same sum for every year afterwards that it should be destitute of such pound. *Held*, that the statute was intended to punish neglect to repair as well as to build pounds.—*Fairbanks v. Antrim*, 2 N. H. 105.

Under the statute requiring towns to provide a good and sufficient pound, suits for a penalty must be brought within one year from the time the offense was committed.—*Pike v. Madbury*, 12 N. H. 262.

The right to impound cattle does not depend upon the extent of damage done by them.—*McConnell v. Cate*, 70 N. H. 296.

SCHOOL DISTRICTS.

Each town constitutes a single district for school purposes; *provided*, however, that districts organized under special acts of the legislature may retain their organization.

All districts legally organized are corporations, with the power to sue and be sued, to hold and dispose of real and personal property for the use of the schools therein, and to make necessary contracts relating thereto. C. 89, SS. 1, 2.

A vote by a school district, whose limits have not been defined by a legal vote of the town in which it is situated, to raise money, is void.—*Johnson v. Dole*, 4 N. H. 478.

When a schoolmaster has been employed by the prudential committee of a school district, the district and not the selectmen are liable to the master for his wages; and in a suit against the master, the selectmen cannot be holden as trustees.—*Ross v. Allen*, 10 N. H. 96.

School districts have power to appoint and instruct agents to prosecute and defend and to withdraw defenses and confess judgment.—*Denniston v. School Dist.*, 17 N. H. 492.

A town may receive by bequest and hold in trust a sum of money the income of which is to be invested yearly in the purchase and use for display of United States flags, but it has not the power to raise money by taxation for the purpose of executing the trust.—*Sargent v. Cornish*, 54 N. H. 18.

The act of July 2, 1870, chapter 8, gives authority to towns at any time to abolish the school districts therein and constitute the town a single district, when it shall be adopted by vote at a legal meeting.—*Wild v. Colburn*, 54 N. H. 71.

Independent school districts exercising powers equal to those of a town district, were districts organized under special acts, within the meaning of Statutes 1885, chapter 43, section 1.—*Sargent v. District*, 63 N. H. 528.

Under chapter 96, Laws of 1901, an independent school district which does not maintain a high school, or one of corresponding grade, is liable for the tuition of children resident therein, who attend a high school elsewhere.—*Union School District v. District*, 71 N. H. 269.

The statute requiring school district clerks to deliver to the selectmen an attested copy of every vote of the district to raise money within ten days after the meeting, is directory and not mandatory, in respect of time.—*Smith v. Swaine*, 71 N. H. 277.

The moderator of a school district meeting who unlawfully refused to poll the voters when duly required is liable for neglect of official duty under section 14, chapter 255, Public Statutes, and the penalty prescribed may be recovered by a criminal proceeding in the name of the state.—*State v. Waterhouse*, 71 N. H. 488.

The statute making a penal offense the failure of a parent to send his child to school is not in conflict with the constitution.—*State v. Jackson*, 71 N. H. 552.

A school district is not liable at common law for injuries to a pupil which result from improper means of transportation negligently provided for the accommodation of scholars at the public expense.—*Harris v. School District*, 72 N. H. 424.

Meetings.—The annual meetings of every school district are held between the first day of March and the twentieth day of April inclusive, for the choice of district officers and the transaction of other district business. Special meetings may be held whenever in the opinion of the school board there is occasion therefor, or whenever ten or more voters shall make written application to the school board, setting forth the subject-matter upon which action is desired.

Meetings are warned by the school board in a manner similar to the warnings of town meetings. C. 90, SS. 1-8.

Voters.—Any person, male or female, in all other respects except sex, qualified to vote in town affairs, may vote at school district meetings in the district in which such person has resided and had a home three months next preceding the meeting.

Upon petition of voters, the school board are required to make, post and correct a list of the legal voters in the district, as supervisors are required to do in regard to the list of voters in their towns; and such list shall be used at the election of officers and otherwise, at the annual meeting of the district, as in case of town meetings. *Ibid.*, SS. 9, 10.

Officers.—The officers of a school district are a moderator, a clerk, a school board of three persons, a treasurer, one or more auditors, and such other officers and agents as the voters may judge necessary for managing the district affairs. *Ibid.*, S. 12.

While any district maintains a high school or unites with another district in maintaining one, it may have a school board consisting of three, six, or nine members, as it shall determine by vote or by-law. In case it ceases to maintain a high school, it elects thereafter only one member to the school board each year, so that the board will decrease in numbers, year by year, until it has only three members. *Ibid.*, S. 13.

In *quo warranto*, the record of the declared election is not conclusive. A person declared elected and inducted into office is a *de facto* officer, though not lawfully elected.—*Attorney-General v. Megin*, 63 N. H. 378.

The removal of the common-law disability was necessary to enable women to be members of the school board, Laws 1879, chapter 57, section 19.—*Ricker's Petition*, 66 N. H. 230.

Towns are not liable for the board or wages of teachers in the district schools, nor can they be made liable by a vote of the town to raise money for the purpose of paying them.—*Wheeler v. Alton*, 68 N. H. 477.

Election, Duties.—The moderator is chosen by ballot and plurality vote; the clerk, school board, and treasurer are chosen by ballot by a

majority vote. The moderator, clerk, and school board are required to be sworn. C. 90, S. 15.

One-third of the members of the school board are chosen each year to hold office for three years, and vacancies in the board are so filled as to preserve such succession in office. All other officers are chosen annually and hold office for one year and until their successors are elected and qualified. *Ibid.*, S. 16.

Eligibility to Office.—No person shall be eligible to any school district office unless he is a voter in the district. *Ibid.*, S. 14.

When the husband has forfeited his marital rights by misbehavior, the wife may acquire a separate domicile for all purposes.—*Shute v. Sargent*, 67 N. H. 305.

Moderator.—The moderator has like power and duty as a moderator of a town meeting, to conduct the business and preserve order, and may administer oaths to district officers and in the district business. In case of a vacancy or absence, a moderator *pro tempore* may be chosen. *Ibid.*, S. 17.

Clerk.—The clerk keeps a record of the doings of each meeting; delivers to the selectmen of the town an attested copy of every vote to raise money within ten days after the meeting; reports in writing to the town clerk of the town forthwith after their election, the names and postoffice addresses of the members of the school board; acts as moderator of any meeting until a moderator *pro tempore* is chosen, in case of the absence of the moderator, and has the same power as the moderator to administer oaths. *Ibid.*, S. 18, 19.

Treasurer.—The treasurer has the custody of all moneys belonging to the district, and pays out the same only upon orders of the school board. At the close of each fiscal year he makes a report to the district, giving a particular account of all receipts and payments during the year. He is required to give a bond with sufficient sureties to the district, to the acceptance of the school board, before entering upon the duties of his office. *Ibid.*, SS. 20, 21.

Auditors.—The auditors are required to examine carefully the accounts of the treasurer and school board at the close of each fiscal year, and at other times when necessary, and report to the district whether the same are correctly cast and well vouched. *Ibid.*, S. 22.

Vacancies.—The school board fills vacancies occurring in their board and in other district offices except that of moderator, until the next annual meeting of the district. In case of vacancy of the entire membership of the board, or the failure of the remaining members to agree upon an appointment, the selectmen, upon application of one or more

voters in the district, fill the vacancies so existing until the next annual meeting of the district. *Ibid.*, S. 23.

Superintendent.—A school district may require the school board to elect or appoint a superintendent of schools, to hold office for such term, be vested with such powers, and charged with such of the duties of the school board, and be entitled to such compensation, as it may provide. *Ibid.*, S. 24.

Mandamus lies to compel the selectmen to fill vacancies in the offices of a school district.—*Clark v. Nichols*, 52 N. H. 298.

If a school district fails to hold its annual meeting before April 20th, the offices are so far vacant that the selectmen may appoint.—*Attorney-General v. Burnham*, 61 N. H. 594.

SCHOOL BOARD.

Powers and Duties.—The school board of every district is required to provide schools at such places within the district and at such times in each year, as will best subserve the interests of education, and will give to all the scholars of the district as nearly equal advantages as may be practicable. They may use a portion of the school money, not exceeding 25 per cent, for the purpose of conveying scholars to and from the schools. C. 92, S. 1.

Construes the Statute.—The school board have no authority to apportion or divide the school money in any manner between two or more districts in the town.—*School Dist. v. Prentiss*, 66 N. H. 146.

Towns have no power to require that money raised by them for schools shall be applied to any special purpose. The appropriation of school money rests exclusively with the school board.—*Wheeler v. Alton*, 68 N. H. 478.

School Boards; Flags.—They shall purchase at the expense of the town a United States flag of bunting, not less than five feet in length, with a flag-staff and appliances for displaying the same, for every schoolhouse in the district in which a public school is taught, not otherwise supplied; *provided that* no more than ten dollars shall be expended for such purpose for any one schoolhouse. They shall prescribe rules and regulations for the proper custody, care, and display of the flag; and whenever not otherwise displayed, it shall be placed conspicuously in the principal room of the schoolhouse. C. 92, S. 8.

Teachers, Hire and Dismiss.—They shall select and hire suitable and competent teachers, holding certificates as provided by law, provide necessary fuel, and make such occasional repairs of the schoolhouses and furniture as may be necessary, not exceeding five per cent of the school money.

They may dismiss any teacher found by them to be unsuitable or incompetent, or who shall not conform to the regulations by them prescribed. *Ibid.*, SS. 2, 3.

A prudential committee cannot recover of the district money expended for slight occasional repairs. Such repairs are to be made from the school money assigned to the district.—*Giles v. School Dist.*, 31 N. H. 304.

Board furnished to a teacher under contract with a prudential committee to provide him with board, constitutes a charge upon the school money coming to the hands of the committee, and payment by him of the account for board out of the fund, though made after his term of office had expired, but before the district or his successor in office had made demand on him for the money, extinguishes the claim against the district for the board.—*Barrett v. School District*, 37 N. H. 445.

A school district cannot, by vote, deprive the prudential committee of the power to provide board for teachers.—*School Dist. v. Currier*, 45 N. H. 573.

If the prudential committee of a school district receive the money assigned to the district for the support of schools, and neglect to appropriate it to that use, the district, after his term of office has expired, may recover the money of him in an action for money had and received.—*School Dist. v. Sherburne*, 48 N. H. 52.

Regulations, Prescribe.—They may prescribe regulations for the attendance upon and for the management, studies, classification and discipline of the schools; and such regulations when recorded by the district clerk, and a copy thereof has been given to the teachers and read in the schools, shall be binding upon scholars and teachers. *Ibid.*, S. 5.

Studies Prescribed.—They are required to prescribe in all mixed schools and all graded schools above primary, studies of physiology and hygiene having special reference to the effects of alcoholic stimulants and narcotics upon the human system, and see that they are thoroughly taught, and that the Constitution of the United States and of the state of New Hampshire be read aloud by the scholars at least once during the last year of the course below the high school, and may permit or prescribe the study of algebra, geometry, surveying, book-keeping, philosophy, chemistry, and natural history, and other suitable studies.

They examine candidates for teachers and issue certificates of qualification to such as they deem satisfactory, to continue in force one year. *Ibid.*, S. 6.

Text-books Purchased.—It is their duty to purchase, at the expense of the town, text-books and other supplies needed for use in the schools, and to loan the same to the pupils free of charge, subject to such regulations for their care and custody as the school board may prescribe. No book may be introduced into the public schools calculated to favor any political party. *Ibid.*, S. 7.

Act of December 28, 1844, construed as including assessments made for taxes raised to pay for erections and repairs of schoolhouses already completed, as well as those in terms required to be made for taxes raised for building and repairing such houses.—*Rogers v. Bowen*, 42 N. H. 102.

Persons and property annexed to a school district in an adjoining town are subject to schoolhouse taxes in the district to which they are annexed and not elsewhere. So when the town containing the district to which they are annexed is subsequently consolidated into one district they will be subject to school taxes therein.—*Pickering v. Coleman*, 53 N. H. 424.

All money raised by a town for school purposes must be paid over to the school board, who alone are responsible, under a heavy penalty, for its lawful expenditure.—*Wheeler v. Alton*, 68 N. H. 478.

Visit Schools.—They also visit and examine each school in their district at least twice in each term, once near the beginning and once near the end thereof. *Ibid.*, S. 10.

Reports.—It is their duty to file with the selectmen of the town, on or before the first day of August in each year, detailed reports to their districts of the schools under their charge, showing the number of weeks kept in winter and summer, the number and sex of teachers, the attendance of pupils and other particulars as to the age and sex of the pupils who have attended the schools, and the number of persons in each district between the ages of fourteen and twenty-one years who cannot read and write.

They are required to send each year copies of their annual reports and answers to questions proposed by him, to the superintendent of public instruction. *Ibid.*, SS. 12, 13.

Truant Officers Appointed.—They appoint truant officers and fix their compensation at a reasonable rate, to be paid by the town. *Ibid.*, S. 15.

Census.—Truant officers or agents appointed by school boards shall annually, in the month of September, make an enumeration of the children of each sex, between the ages of five and sixteen years in their town, giving such items in regard to each child as may be required by the school board or the state superintendent, and shall make a report to the school board thereof within fifteen days after the completion. Acts of 1895, C. 46, amended by Acts of 1905, C. 91.

Academies, May Contract with.—Any school district may make contracts with any academies or high schools or other literary institutions located in the state, for furnishing instruction to its scholars; and such school district may raise and appropriate money to carry into effect any contracts in relation thereto. Every such academy, or high school, or literary institution shall then be deemed a high school maintained by such district, if approved by the superintendent of public instruction in accordance with section 4 of this act. Acts of 1905, C. 90, S. 1.

Where a contract under the statute is made between a school district and an incorporated academy, providing for the transfer to the academy of the functions pertaining to the offices of superintending and prudential committees, the duties and powers of those officers, as to the school maintained under the contract, cease while the contract remains in force.—*Page v. Haverhill Academy*, 63 N. H. 216. Cited with approval in *Holt v. Antrim*, 64 N. H. 288.

High School Defined.—By the term “high school” or “academy” is understood a school having at least one course of not less than four years, properly equipped and teaching such subjects as are required for admission to college, technical school, and normal school, including reasonable instruction in the constitution of the United States and the constitution of New Hampshire, such high school or academy to

be approved by the state superintendent of public instruction, as complying with the requirements of this section. Acts of 1905, C. 19.

Established.—Any school district may, by vote or by-law, establish and maintain a high school in which the higher English branches of education and the Latin, Greek, and modern languages may be taught.

Two or more adjoining districts in the same or different towns may make contracts with each other for establishing and maintaining jointly a high or other public school for the benefit of their scholars, and may raise and appropriate money to carry the contracts into effect; and their school boards, acting jointly or otherwise, shall have such authority and perform such duties in relation to schools so maintained as may be provided for in the contracts. C. 89, SS. 9, 10.

Maintained.—It shall be the duty of any town in which there is a high school established by vote of the town, to raise and appropriate each year sufficient money, to properly maintain such school. Acts of 1905, C. 72.

Discontinued or Relocated.—No high school established by vote of the town shall be discontinued, or the location thereof changed, except by the superior court on petition of the school board of the town-district in which it is located, after such notice as the court may order, if it shall appear that the educational interests of the town-district require such discontinuance or change. Acts of 1905, C. 20.

Length of Schools.—Every school district in the state shall maintain its schools at least twenty weeks during every school year. Acts of 1899, C. 77, S. 5.

Non-residents Admitted.—Each district may determine upon what terms scholars from other districts or towns may be admitted into its schools. If the district neglects to make such determination, the school board may do it. C. 89, S. 12.

Money Raised for Certain Purposes.—School districts may raise money to procure land for schoolhouse lots, and for the enlargement of existing lots; to build, purchase, rent, repair, or remove schoolhouses and outbuildings; to procure insurance; to plant and care for shade and ornamental trees upon schoolhouse lots; to provide suitable furniture, books, maps, charts, apparatus, and conveniences for schools; and to pay debts. *Ibid.*, S. 3.

School districts may hire money for building schoolhouses not exceeding four-fifths of the cost thereof, which shall be payable within five years, in equal proportions, with the interest.

The selectmen, upon application of the creditor and receipt of copies of the vote and note of the district, may, in each annual tax, assess upon the district one-fifth of such debt and the interest, and shall cause

the same to be collected and paid to the town treasurer, and shall give an order upon the treasurer to the creditor for the amounts collected. *Ibid.*, SS. 4, 5.

A vote by a school district to raise a given sum to remove and repair a schoolhouse is within the authority granted by statute to raise money for erecting and repairing schoolhouses.—*Bump v. Smith*, 11 N. H. 48.

Before the law of July 9, 1855, school districts had no power to borrow money to build schoolhouses, or to bind themselves by a promissory note therefor.—*Weare v. School District*, 44 N. H. 189.

Money, Joint Districts Share in.—Every district situate in two or more towns shall be entitled to its just proportion of school taxes, income of school funds, literary fund, and dog tax in each town, according to the valuation of polls and property taxable therein. C. 89, S. 13.

Such district is entitled as stated in the statute to its just proportion of money raised beyond the amount required by law to be assessed according to the valuation of persons and property taxable therein and a vote of one of the towns making a different disposition of such money is inoperative.—*School District v. Twitchell*, 63 N. H. 11.

Scholars; Rules of Attendance.—Any scholar may be dismissed from school by the school board for gross misconduct or for neglect or refusal to conform to the reasonable rules of the school.

No scholar who has been assigned by the school board to any particular school shall attend any other school in the district until assigned thereto.

Power is vested in the districts to make by-laws, not repugnant to law, concerning habitual truants and children between the ages of six and sixteen years not attending school and not having a regular and lawful occupation, and to compel the attendance of such children at school, and may annex penalties for the breach thereof not exceeding ten dollars for each offense.

No child under the age of sixteen years, who cannot read and write may be employed in any manufacturing establishment during the time the public schools in the district in which he resides are in session.

Children not included in the foregoing class may not be so employed, unless they first furnish to the person offering to employ them a certificate of the school board of the district where they reside, that they have attended some public or private school in which the common English branches are taught, for stated periods during the preceding year, except graduates of a grammar school approved by the state superintendent of education, and children holding certificates of the school committee of the district in which they reside, that they have an education equal to that of such graduates. C. 93, SS. 3-13.

Under Revised Statutes, chapter 73, section 7, minors who were sent into a district by their father to reside with an aunt under indentures of apprenticeship, but which were made only for the purpose of sending the children to school, were *held* to be trespassers and liable to an action by the district.—*School Dist. v. Bragdon*, 23 N. H. 507.

The minor children of paupers supported at a county poor farm have the

right to attend the public school in the district in which such county farm is located.—*School Dist. v. Pollard*, 55 N. H. 503.

Compulsory Attendance.—Every person having the custody and control of a child between the ages of eight and fourteen years, or of a child under the age of sixteen years, who cannot read at sight and write legibly simple sentences in the English language, residing in a school district in which a public school is annually taught, shall cause such child to attend the public school all the time such school is in session, unless the child shall be excused by the school board of the district, because his physical or mental condition is such as to prevent his attendance at school for the period required, or because he was instructed in the English language in a private school approved by the school board, for a number of weeks equal to that in which the public school was in session, in the common English branches, or, having acquired those branches, in other more advanced studies. C. 93, S. 14.

Supervisory Districts; Superintendent.—Two or more towns or special districts, or their school boards, when duly authorized by their respective districts, may, by vote of each, form a supervisory district for the purpose of employing a superintendent of the public schools therein, who shall perform in each town the duties prescribed by law and by the regulations of the school board, giving thereto his entire time. Acts of 1899, C. 77, S. 1.

The school boards of the districts which form such supervisory district, acting as a joint committee, elect a superintendent for such district, determine the character and value of his services, and apportion the same among the several districts. *Ibid.*, S. 2.

Provision is made by this act whereby one-half of the share apportioned to certain districts of the salary of the superintendent is paid out of the state treasury.

Supervisory districts formed under this act shall not employ fewer than twenty, nor more than sixty, teachers. *Ibid.*, SS. 3, 4.

SEALERS OF WEIGHTS AND MEASURES.

A town may choose annually at the annual town meeting one or more sealers of weights and measures. The selectmen are required to provide the town sealer with a full set of scale-beams, weights and measures, which the sealer carefully keeps as the town standards, and once in three years causes them to be tried and proved by the county sealer.

It is his duty to try and prove by said town standards all scale-beams, steelyards, weights, and measures which are presented to him for that purpose. He is required once in each year in the month of April to visit and examine every place where scales or measures are used for the purchase or sale of any goods or commodities, and to ex-

amine all such scales or measures. When applied to for that purpose, he shall also go to and there try and prove any local platform or other fixed scales, and shall receive for such services a reasonable compensation. C. 43, S. 25; C. 125, SS. 5, 6, 7, 8.

SELECTMEN.

Election.—Every town is required by law to choose by ballot and major vote at the annual meeting three selectmen, who shall manage the prudential affairs of the town, and perform the duties by law prescribed. A majority of the selectmen shall be competent to act in all cases. C. 43, S. 5.

Selectmen may bind the town to indemnify a collector of taxes from the costs and expenses of defending actions brought against him for acts done in performance of his duties.

The phrase "shall have the ordering and managing of all the prudential affairs of the town," construed.—*Pike v. Middleton*, 12 N. H. 278.

A warrant and tax bill signed by a majority of a board of selectmen held good and that a collector's bond approved by a majority would also be good.—*Butler v. Washburn*, 25 N. H. 251.

The record by a town clerk of the election of selectmen in this form: "Chose A. B., C. D., and E. F. selectmen" is not sufficient. The record should show that they were elected by ballot and by major vote.—*Hall v. Manchester*, 39 N. H. 295.

Selectmen have not authority, *ex officio*, without a vote of the town, to borrow money on the credit of the town. Their powers defined.—*Rich v. Errol*, 51 N. H. 355.

There is no legal obstacle to prevent the same individual from holding and exercising at the same time the two offices of selectman and school committee.—*Andover v. Carr*, 55 N. H. 456.

Selectmen may, without a vote of the town, sell and negotiate for the use of the town negotiable promissory notes, the property of the town.—*West v. Errol*, 58 N. H. 233.

Selectmen are agents of the town when no others are chosen.—*Gray v. Rollingsford*, 58 N. H. 253.

Selectmen have power to institute a suit in favor of their town to recover back money had and received without special authority.—*Albany v. Abbott*, 61 N. H. 157.

A town has no power to offer a reward for the apprehension of a criminal except by authority of the statute and is limited by the provisions of the statute.—*Abel v. Pembroke*, 61 N. H. 360.

Vacancies.—If there is a vacancy in the board of selectmen of any town, the remaining members shall fill the same by appointment of some citizen who is a legal voter in the town, and has previously held the office by election of the legal voters of the town. *Ibid.*, S. 39.

Other Offices.—If a town at the annual meeting refuses or neglects to fill any town office, by an election, or if there is a vacancy from any cause, the selectmen shall appoint in writing some suitable person to such office, excepting the offices of selectmen, supervisors and auditors and in certain cases the office of highway surveyor; and they shall ap-

point without delay a town clerk, whenever a vacancy occurs in that office. *Ibid.*, S. 38.

The selectmen cannot fill a vacancy in the office of collector, unless the town itself, on previous application, has refused to fill it.—*Johnston v. Wilson*, 2 N. H. 202.

Where a town fails to elect highway surveyors at its annual meeting and the selectmen directed one W. to act as highway surveyor and he did so, the town cannot be heard to deny that W. was surveyor in the district where he acted as such, even though other usual requisites for appointment were not complied with.—*Dow v. Epping*, 48 N. H. 75.

Selectmen having power to appoint some one to act as fence-viewer upon a special occasion only appointed one to act generally as fence-viewer. *Held*, that the person so appointed could legally act on the special occasion—the appointment being *pro tanto*.—*Hartshorn v. Schoff*, 51 N. H. 316.

When all the selectmen are disqualified to act, they may appoint a board to hear and determine a petition for a new highway; but if there remains one of the board who is qualified, he must appoint those who are to take the place of the persons who are disqualified.—*Northern R. R. v. Enfield*, 57 N. H. 508.

Selectmen may appoint health officers where none are chosen by the town.—*Bedford v. Rice*, 58 N. H. 446.

Selectmen cannot lawfully appoint supervisors in case of a failure by the town to elect. No vacancy occurs because the old board continues in office until others are chosen and sworn.—*State v. Hadley*, 64 N. H. 473.

Annual Reports.—At the close of each fiscal year the selectmen shall make a report to the town, giving a particular account of all their financial transactions during the year, and of the financial condition of the town at the close of the year, including a schedule of all its assets and liabilities; and also a separate account of each trust fund held by the town, showing its income, the expenditures made in its administration, and the investment of its funds. C. 43, S. 11.

The selectmen shall cause their report and those of the treasurer, auditors, school boards, town clerk relative to vital statistics and of other town officers required by law to make reports, to be seasonably published in pamphlet form at the expense of the town and distributed among the voters at or before the annual meeting. *Ibid.*, S. 12.

Agriculture, State Board.—The selectmen and assessors of the several towns and cities of the state, at the time of taking the inventory in April of each year, shall obtain answers to questions furnished by the secretary of the board of agriculture in regard to the results of agricultural investments and labor, and the prosperity of the farming population, and return them to the secretary of the board on or before the first day of May following. C. 12, S. 11.

Aqueduct and Gas Light Companies, License.—No person or corporation shall dig up any highway or public ground for the purpose of laying water or gas pipes, or other structures therein, or of repairing the same, without first obtaining the consent of the selectmen of the town. C. 82, S. 1.

Selectmen, upon petition of any aqueduct or gas light corporation or company, or of any person who supplies water or gas to people for hire, may lay out for the petitioner an easement to place and maintain pipes and other structures for conveying water or gas in any unaccepted street, or private way in the town, if they find that the public good requires it.

They shall proceed upon such petition the same as in the laying out of a highway. *Ibid.*, SS. 3, 4.

Automobiles.—The selectmen of any town, or the joint boards of selectmen of two or more adjoining towns, may issue a special permit to the manager or person in charge of an automobile meet, or gathering, for trials of speed or endurance upon a particular highway, or over a specified route. Such permit shall be limited to the days specified therein. Every family residing on such highway or route shall be notified in writing, and the public shall be notified by publication in the local newspapers issued the week next prior to such meeting that such permit has been granted. Acts of 1905, C. 86, S. 12.

Bastard Children, Prosecutions.—In cases of bastard children, the selectmen may make complaint and the town may prosecute, if the woman shall abandon her complaint against the man chargeable. C. 87, SS. 5, 6, 7.

It is a civil, not a criminal, suit. The defendant is not arraigned but appears and pleads by attorney; if he is discharged he is entitled to costs as the prevailing party.—*Marston v. Jenness*, 11 N. H. 160; *Harris v. County of Sullivan*, 15 N. H. 82.

The town where a woman, liable to become a county pauper, dwells and has her home, is, by law, liable for the maintenance of her bastard child. If she neglects or refuses to prosecute, the town may prosecute the putative father for the purpose of obtaining indemnity against liability for the maintenance of the child.—*Warren v. Glynn*, 36 N. H. 424.

It is settled that a complaint of this kind may be made by the town in which the mother resides, whether the mother has a legal settlement there or not, or whether she is actually a pauper or not.—*Hoit v. Cooper*, 41 N. H. 118.

The mother can make the complaint only before the birth of the child.—*M. J. J. v. J. C. B.*, 47 N. H. 362.

When complaint is made by the selectmen on behalf of the town, the statute does not require any allegation of the place where the child was begotten.—*Littleton v. Perry*, 50 N. H. 29.

The same magistrate to whom complaint for bastardy is made should issue the warrant upon the complaint.—*Corey v. Sumner*, 52 N. H. 479.

A complaint for bastardy may be made by a town before the birth of the child.—*Warner v. Wheeler*, 62 N. H. 385.

Bicycle Permits.—The selectmen of a town may in their discretion, upon any special occasion, grant permits to any person or persons to ride bicycles or tricycles, at any rate of speed, for a time not exceeding one day upon specified portions of the public ways of the town, and may annex such other reasonable conditions to such permits as they shall deem proper. Acts of 1897, C. 93, S. 1.

Board of Assessment.—The selectmen, with the assessors chosen by the town, constitute a joint board for the assessment of taxes; and all questions arising at such board are decided by major vote of the members thereof. C. 43, S. 6.

Selectmen alone may assess taxes, if no assessors are elected.—*Scammon v. Scammon*, 28 N. H. 419.

Books and Documents, Preservation of.—The selectmen shall provide, at the expense of the town, suitable cases for the preservation of the laws, reports, and other books and pamphlets received by the town from the state or others. *Ibid.*, S. 47.

Bounties.—The selectmen are authorized to pay bounties on bears, hedgehogs, locusts and grasshoppers, and upon presentation of a true account of all money so paid, certified by a majority of the board to the treasurer of the state, the amount so paid will be refunded from the state treasury. Acts of 1895, C. 121; Acts of 1903, C. 62.

Buildings, Public; Construction Regulated.—Towns and village districts may make by-laws requiring factories, hotels, tenement-houses, public halls, schoolhouses and other buildings used as places of public resort, to be provided with ample means for escape in case of fire, and adequate facilities for entrance and exit on all occasions, and to be so erected as not to endanger the health and safety of persons who occupy them; and they may provide thereby for the inspection of such buildings.

In the absence of such by-laws, the selectmen shall make regulations for the above-named purposes.

In the absence of other officers, the selectmen of the town constitute a board for the inspection of the buildings and halls above mentioned, and shall inspect the same from time to time.

In case they deem it necessary, upon notice and hearing of the parties interested, they may direct alterations to be made in any building or hall in accordance with the regulations made by them, and may order such building or hall to be closed until the alterations are made. The proceedings of such hearings shall be recorded in the records of the town. C. 116, SS. 1-4.

Cemeteries.—Every town shall provide one or more suitable public cemeteries for the interment of deceased persons within its limits, which shall be subject to such regulations as the town may establish. C. 51, S. 1.

No cemetery shall be laid out within twenty rods of any dwelling-house, store, or other place of business without the consent of the owner of the same, nor any enlargement of existing cemeteries within twenty rods, except when the land so laid out is at a greater distance from any dwelling-house, store, or public place than the original

cemetery for the enlargement of which such land shall be taken. And any cemetery laid out by an individual or corporation located within the limits above named, in which all lots have been sold, and for the care of which trust funds are held by the town, shall be under the control of the selectmen. *Ibid.*, S. 2.

Cemeteries; Fence; Trespasses.—It is the duty of the selectmen to provide and maintain around all public burial-places of the dead in their towns a good and sufficient fence, and to supply the same with necessary gates; and they are authorized to draw their warrant upon the town treasurer for the funds necessary to pay the expenses of such fences and gates. Acts of 1897, C. 59, SS. 1, 2.

The selectmen are required to collect by suit, if necessary, and pay over to the town treasurer a fine of not less than five dollars nor more than fifty dollars from the owner of any stock found trespassing upon such burial-places. Compliance with this requirement may be enforced upon complaint of any citizen of the state by the commissioners of the county wherein the town is situated. *Ibid.*, SS. 3, 4.

Remains Removed; Monuments.—In case of the discontinuance of a public cemetery, the selectmen may at the expense of the town, disinter the remains of persons buried in such cemetery and reinter them in the unoccupied part of some other public cemetery within the town, in the place designated by the nearest surviving relatives of the deceased person, if any is designated. The monuments, gravestones and other appurtenances attached to the graves shall be carefully removed and properly set up at the places of reinterment. C. 51, SS. 4, 5.

The right of burial in a public cemetery is not an absolute right of property but a privilege or license to be enjoyed so long as the place continues to be used as a burial-ground, subject to municipal regulation and control and legally revocable whenever the public necessity requires.—*Page v. Symonds*, 63 N. H. 17.

Collectors and Treasurers, Removal.—The selectmen may remove from office any collector of taxes, or any treasurer, who, in their judgment, has become insane or otherwise incapacitated to discharge the duties of the office, or who has neglected, for ten days after a written notice, to furnish a bond to their acceptance. They may proceed without notice in any case arising under this section. C. 43, S. 10.

A collector of taxes who has not completed the collection of the taxes on his list, nor been discharged from his liability to the town as collector, is disqualified to hold the office of selectman, but, having assumed the office under color of an election, he is an officer *de facto* and his official acts are valid as to third persons.—*Attorney-Gen. v. Marston*, 66 N. H. 487.

Diseases of Domestic Animals.—The selectmen shall cause all domestic animals infected with glanders or any other contagious disease, or which have been exposed to such diseases, to be collected in some suitable place, or places, and kept isolated from other animals so long

as may be necessary to prevent the spread of the disease. In the performance of such duties they shall be governed by the regulations and directions of the state board of cattle commissioners.

The selectmen may order any domestic animal to be killed and buried which in the opinion of a veterinary surgeon selected by them, has a contagious or infectious disease, in cases where the state cattle commissioners do not act.

It is also the duty of the selectmen to prosecute offenders against the law concerning diseased animals. C. 113, SS. 9, 10, 11, 20.

Where a diseased animal is killed under Laws 1889, chapter 93, the court has no power to compel a city or town to pay the value of the animal before it became diseased. The value is as of the time when appraised.—*Campbell v. Manchester*, 67 N. H. 148.

Dogs, Unlicensed to be Killed.—The selectmen of each town are required within ten days from the first day of May, annually, to issue a warrant to one or more police officers or constables directing them forthwith to kill or cause to be killed all dogs within the town not licensed and collared according to law, and to enter complaint against the owners or keepers of such dogs. Acts of 1891, C. 60, S. 11.

Each officer or constable to whom the warrant was issued, as provided in the preceding section, is required to return the same on or before the first day of July following, to the selectmen. The return should state the number of dogs killed, the names of the owners or keepers thereof, and whether all unlicensed dogs in the town have been killed and complaints entered against all persons who have failed to comply with the law. *Ibid.*, S. 12.

The chairman of the selectmen transmits annually within ten days from the first day of July a certificate verified by oath, reciting the issue of the warrant, and whether the same has been duly executed and returned, according to law, to the county solicitor of the county in which the town is situated. *Ibid.*, S. 13.

Dogs Muzzled.—The selectmen may order any dog within the limits of their town to be muzzled or restrained from running at large, during such time as shall be prescribed in such order. After passing such order and posting certified copies thereof in two or more public places in the town, or publishing such copy once in a newspaper published in the town, they may issue their warrant to one or more police officers or constables, who shall after twenty-four hours from the publication of such notice, kill all dogs found unmuzzled, or running at large contrary to such order. *Ibid.*, S. 19.

They may cause special service of any such order to be made upon any person by causing a certified copy of the same to be delivered to him; and if he refuses or neglects for twelve hours thereafter to obey such order, he shall be punished by a fine of not over twenty-five dollars. *Ibid.*, S. 21.

ELECTIONS.

Ballot-boxes.— A suitable box or boxes shall be provided by the selectmen, at the expense of the town, in which to receive the ballots of voters. C. 34, S. 1.

Bribery Laws.— It shall be the duty of the selectmen to post, or cause to be posted, in some conspicuous place where the town meeting is held, a copy of sections sixteen to twenty-three, inclusive, of this chapter. C. 39, S. 23.

Counting Votes.— The selectmen and town clerk shall assist in sorting and counting the votes. C. 34, S. 7.

The ballots having been placed by the moderator in a suitable envelope or other wrapper and sealed, the moderator and selectmen shall indorse and subscribe upon the outside of the package a certificate as given in the statute. *Ibid.*, S. 13.

Fraudulent Conduct.— A selectman guilty of fraudulent conduct at any meeting in the receipt, counting, or declaration of a ballot, or vote, at any election, shall for each offense, be fined not exceeding five hundred dollars, or be imprisoned not exceeding one year, or both. C. 39, S. 9.

If, at a balloting for representative, the check-list be not used, the person who puts in more than one vote at one and the same balloting incurs no penalty.— *Morril v. Haines*, 2 N. H. 246.

Selectmen are not liable upon an indictment for refusing to insert the name of a voter upon the check-list, if they act honestly and in the exercise of their best judgment.— *State v. Smith*, 18 N. H. 91.

Inspectors Appointed.— The selectmen, at some time between the first and tenth days of October preceding the biennial election, are required to appoint, as additional election officers, to act with the clerk, moderator and selectmen at each polling-place, four inspectors. Such officers shall be qualified voters at the said polling-place and shall be appointed from the two political parties which cast the largest number of votes for governor at the biennial election next preceding their appointment, and two of them shall be of a different political faith from that of the clerk and the other inspectors. The appointments shall be made from nominations of caucuses of the two parties named holden by the town, if such nominations are made on or before the first-day of October. Each of said officers is required to be sworn and holds office for two years from the first day of November in the year in which he is appointed.

In case of a vacancy or the absence of any such inspector at any election, the selectmen shall appoint some person qualified to fill the office, and such appointment shall be made from nominations of the caucuses, or in default thereof, from similar nominations of the town

executive committees of the two parties above named, *provided* such nominations are made. Acts of 1897, C. 78, S. 14.

Meeting to Fill Vacancy.—Whenever a vacancy shall exist in the representation of any town in the general court by reason of the death, resignation, or removal from town of the person who shall have been elected as such representative, the selectmen shall, without unnecessary delay, call a meeting of all persons in such town qualified to vote in the election of senators, at which a representative shall be elected as provided in article fifteen of the constitution. C. 38, S. 6.

Polling-places Prepared.—The selectmen in the different wards and towns shall prepare the polling-places, or booths therein, and shall cause the same to be suitably provided with marking-shelves or compartments at or in which voters may conveniently mark their ballots, so that in marking thereof they may be screened from the observation of others; and a guard-rail shall be so constructed and placed that only such persons as are inside said rail can approach within six feet of the ballot-box and of such marking-shelves or compartments, or within four feet of the ballots in possession of the ballot-clerks. The arrangement shall be such that neither the ballot-box nor the marking-shelves or compartments shall be hidden from view of those just outside the said guard-rail.

The number of such marking-shelves or compartments shall not be less than one for every seventy-five voters qualified to vote at such polling-place, and in any case not less than four such marking-shelves or compartments at any polling-place. Acts 1897, C. 78, S. 15.

If no supervisors of the check-list are chosen at a biennial election, they may be elected at a town meeting specially called for the purpose.—*State v. Bean*, 63 N. H. 249.

Finances of Town Reported to State Treasurer.—The chairman of the board of selectmen shall forward to the state treasurer within ten days after the completion of the assessment of taxes each year, a report giving the information concerning the financial condition of the town required by section ten of chapter sixteen of the Public Statutes; and in case of failure so to do, he shall be fined fifty dollars for the use of the county. C. 43, S. 15.

Fire Wards, Damage Appraised.—The selectmen, on application, shall appraise the damage done to any building or thing by order of the fire-wards or engineers (to stop the progress of a fire), shall assess a tax for the payment therefor, and shall make compensation to the owner unless it shall appear that the fire began in such building, or that the same must have been burned if it had not been destroyed or removed. C. 115, S. 10.

Gunpowder, Safekeeping; Seizures.—The board of firewards, if any, or the selectmen of any town, may establish rules and regulations from time to time relative to the times and places at which gunpowder may be brought to or carried from such town, by land or water, and the time when and the manner in which it may be transported through the town. C. 117, S. 1.

Any two firewards, police officers, or selectmen may search any building in the compact part of the town and any vessel lying in any port, in which they have cause to suspect that gunpowder in greater quantity than twenty-five pounds is kept or stored; and, in case a greater quantity shall be found, shall seize the same as forfeited. *Ibid.*, S. 2.

Penalties and forfeitures of money incurred by violation of this chapter shall be recovered by action of debt to be brought by the firewards, police officers, or selectmen in the name of the town, and shall be expended in the purchase of such articles as may be used in the extinguishment of fires. *Ibid.*, S. 10.

Hawkers and Peddlers, Certificates.—The selectmen of a town, whenever an application is made to them for a certificate of good moral character by a person desiring to obtain a hawker's or peddler's license, shall forthwith act upon the same, and if in their judgment it should be issued to such applicant, shall at once issue the same. They are authorized to administer oaths when sitting upon such applications. Acts 1897, C. 76, S. 2.

Hearings, Rules.—On petition to the selectmen for the laying out or altering of highways, or for laying out lands for any public use, and generally for the purpose of deciding any question affecting the conflicting rights or claims of different persons, their proceedings shall be governed by the following rules:

They shall appoint a time and place of hearing, and order notice thereof to be given to all persons whose property or rights may be directly affected by the proceeding, by giving to them or leaving at their abode an attested copy of the petition and order fourteen days at least before such hearing, or, if such persons are non-residents, by publication. If the owner is under guardianship, such notice shall be given to his guardian. If the owner is a minor, or under any legal disability, the judge of probate may appoint a guardian for such person, to whom notice shall be given.

Notice shall be given to all other persons interested by posting a like copy in one of the most public places in the town or district affected by the petition, and by leaving a like copy at the abode of the clerk of such town or district a like time before the hearing.

They shall hear all parties who desire to be heard, and examine them and their witnesses under oath, which either of the selectmen may administer; they may adjourn when they deem it necessary; and they shall

make their decision in writing, and cause the petition, order of notice, evidence of service, and their decision to be filed in the town clerk's office and recorded at length upon the town records; and their decision shall be of no force or effect until the same is done.

No selectman or other officer shall act, in the decision of any such case, who would be disqualified to sit as a juror for any cause, except exemption from service, in the trial of a civil action in which any of the parties interested in such case was a party.

The place of a selectman or other officer so disqualified shall be supplied by appointment, by the other members of the board, of a qualified person who has theretofore holden the same office in the town, or, in the case of committees, by a new appointment.

If in any case the whole board is disqualified, the selectmen shall, in writing, so inform some justice of the supreme court, who shall thereupon, with or without notice, appoint a new board for that case from qualified persons who have before holden the same office in the town, if such there be, otherwise from qualified persons, residents of another town, who have holden the same office. C. 45, SS. 1-4, 6-8.

HIGHWAYS.

Defined.—Highways are only such as are laid out in the mode prescribed therefor by statute, or as have been used as such for public travel thereon, other than travel to and from a toll-bridge or ferry, for twenty years. C. 67, S. 1.

A highway may be created by a dedication or donation of the land by the owner, accompanied by an acceptance or recognition of the way by the public authority.—*State v. Atherton*, 16 N. H. 203.

After a town has acquiesced for more than twenty years in the doings of their selectmen in laying out a highway, they are estopped from saying that the road was not legally laid out.—*State v. Boscawen*, 32 N. H. 331; *Conway v. Jefferson*, 46 N. H. 521; *Gilbert v. Manchester*, 55 N. H. 298.

Where a road in a town has not been used twenty years as a public highway, the town is not estopped to show that it has not been legally laid out as a highway.—*Eames v. Northumberland*, 44 N. H. 67; *Stevens v. Nashua*, 46 N. H. 192.

Proof that part of an entire highway has been used by the public for the term of twenty years is evidence of a legal highway as to the part so used, although no distinct act of acceptance by the town be shown.—*State v. Morse*, 50 N. H. 9.

The use of a highway for more than twenty years over ground in front of an academy building, which was thrown open as a common, with occasional repairs upon it and the filling of gullies, does not as a matter of law establish a right of way by prescription.—*Burnham v. McQuesten*, 48 N. H. 446.

A way dedicated by a landowner to public travel, and used as a highway twenty years without interruption, becomes a highway by prescription.—*Ruland v. So. Newmarket*, 59 N. H. 291.

A road constructed on other courses than those described in the judgment laying it out is not a legal highway.—*Spaulding v. Groton*, 68 N. H. 77.

Evidence that a road has been regularly used by the public for more than twenty years, that highway surveyors have worked upon it and that it has been treated like other highways in the town, is admissible to prove a highway by prescription or dedication.—*Burbank v. Railway*, 70 N. H. 398.

Laying Out.—Selectmen, upon petition, may lay out any new highway, or widen and straighten any existing highway, within their town for which there shall be occasion. C. 67, S. 2.

Selectmen have authority to lay out highways only in cases where applications are made to them for the purpose.—*Pritchard v. Atkinson*, 3 N. H. 335.

Highways of two classes may be laid out by the selectmen, viz., (1) for the particular accommodation of individuals and (2) for town ways, when there is "an occasion for a new highway." And highways of the two first classes may be laid out by the common pleas, when the selectmen neglect or refuse to lay them out.—*Dudley v. Cilley*, 5 N. H. 558.

Where a highway is laid over a turnpike road and the easement or franchise of the corporation is taken, it is not necessary to notify the owners of the land over which the turnpike road was established.—*Pierce v. Somersworth*, 10 N. H. 369.

As to the form of notice to parties and the service of such notices, see *Parish v. Gilmanton*, 11 N. H. 293.

Highways can properly be laid out by selectmen or the court of common pleas only upon written application made for that purpose.—*Wiggin v. Exeter*, 13 N. H. 304.

Where a town, at a meeting warned to see if the town would instruct the selectmen to lay out a certain road, voted so to instruct, and the selectmen returned that pursuant to the vote they did lay out the road, it was *held* that the road was not legally laid.—*State v. Newmarket*, 20 N. H. 519.

December 4, 1848, a petition for a highway in a town was presented to the selectmen and remained pending before them till July 7, 1849, without final action having been had by them. On July 7th they met and separated without making a decision or adjournment to any further time or place. *Held*, that the omission to act on the petition for so long a time was such a neglect as gave the court of common pleas jurisdiction of the subject-matter.—*Stratton's Petition*, 21 N. H. 44.

In a petition for a new highway, if the route is described as commencing at a known monument, it will be sufficient though the distance of the monument from other known points be misstated.—*Knowles' Petition*, 22 N. H. 361.

The laying out of a highway upon inducements or considerations other than the public good is illegal.—*Gurnsey v. Edwards*, 26 N. H. 224.

A railroad corporation applied to the selectmen of S. to lay out a road to take the place of one obstructed by the railroad. This was done. *Held*, that the highway was laid out for the accommodation of the railroad and the latter should pay for it.—*Ellis v. Swansey*, 26 N. H. 266.

Road commissioners have like powers as selectmen, to lay out highways over existing ways and bridges and to award damages for the franchise.—*State v. Conterbury*, 28 N. H. 195.

The court of common pleas has power to entertain petitions for laying out highways over lands in two or more towns and also where the selectmen of any single town neglect or refuse to lay out a highway prayed for in said town.—*White v. Landaff*, 35 N. H. 128.

A bridge is a highway, and upon petition for the same, a road may be laid out, the termini of which are upon the banks of a river. The court of common pleas has jurisdiction of petitions for highways in towns bordering upon adjacent states where the petitions have been presented to selectmen of such towns and refused by them.—*Crosby v. Hanover*, 36 N. H. 404.

A majority of a board of selectmen may legally lay out a highway.—*Hall v. Manchester*, 40 N. H. 410.

The selectmen have jurisdiction to lay out a highway over land reclaimed from the sea or navigable river by embankments or filling in so as to raise it above high-water mark.—*Clement v. Burns*, 43 N. H. 609.

Where a condition is affixed to the laying out of a highway for the accommodation of a person applying therefor, any landowner or other person

aggrieved and appealing from such laying out may take advantage of the illegality.—*Underwood v. Bailey*, 56 N. H. 187.

Land cannot be compulsorily appropriated for a highway that would not accommodate the public.—*Underwood v. Bailey*, 58 N. H. 480; *Dillon on Mun. Corp.*, § 460; *Cooley on Const. Law*, § 530.

A vote of a town to discontinue a highway located within the town is valid, though it forms part of a continuous thoroughfare into other towns.—*Drew v. Cotton*, 68 N. H. 22.

A laying out of a highway will be quashed upon *certiorari* so far as it affects the rights of parties who had no notice or knowledge of the highway proceeding, provided they have no other adequate remedy and have not waived their right to object thereto.—*Grand Trunk Ry. Co. v. Berlin*, 59 N. H. 168.

The inhabitants of a town are not parties in highway proceedings, and, as individual tax-payers merely, have no right to appear and be heard in opposition.—*Bennett v. Tuftonborough*, 72 N. H. 63.

Whether an embankment is dangerous, if unrailed, and whether the absence of a rail renders the highway unsuitable for public travel, and reasonable care demands that a rail be provided, are questions of fact for the jury in an action for injuries against a town caused by a defective highway.—*Seeton v. Dunbarton*, 72 N. H. 269.

A town is liable to a person injured while riding a bicycle along a public highway by reason of an unrailed and dangerous embankment which renders the highway unsuitable for ordinary travel.—*Hendry v. North Hampton*, 72 N. H. 351.

Trees standing within the limits of an ancient public highway upon land not required for actual travel are the property of the adjacent owner who cannot be deprived of his right therein without compensation, after a legal hearing.—*Bigelow v. Whitcomb*, 72 N. H. 473.

Notice; Inspection.—Such notice shall be given to each owner in person, or left at his abode, if he is known and resides in the state; otherwise, to the person, if any, who has the care or possession of the land.

If the owner is a person under guardianship, the notice shall be given to his guardian. If the owner is under any legal disability, a guardian may be appointed for him to receive the notice.

Tenants for life or years, and the owners of the remainder or reversion, shall each be separately notified as aforesaid.

Upon affidavit of one of the petitioners that the owner of any land over which such road may pass, or his residence, is unknown or uncertain, the notice may be by publication.

At the time and place so appointed, the selectmen shall make a personal examination of the several routes proposed, and of the highways for which such new highway is designed to be a substitute, shall hear all parties interested who may attend, and any evidence they may offer, and may adjourn as they see cause. *Ibid.*, SS. 4-8.

Suitable Ground.—They may lay out such highway over any ground they may deem most suitable, and alter any highway as they judge proper, without regard to intermediate limits or particular monuments described in the petition. C. 67, S. 9.

They may lay out the same across an existing highway; but no damages shall be awarded when the public have the right of way over the same land. *Ibid.*, S. 10.

Highways may be laid out across any stream or body of water; but no road or bridge shall be so laid out if the reasonable and proper construction thereof may prevent the use of such waters for boats, or rafts, or for running timber. *Ibid.*, S. 11.

Damages sustained by any person by the discontinuance of a highway may be assessed against a town only when they are such as are not common to the public, but special and peculiar and directly result from the discontinuance.—*Crgm v. Laconia*, 71 N. H. 41.

If damaged by obstruction of surface water, a town has the same remedy as a private landowner.—*Franklin v. Durgee*, 71 N. H. 186.

A vote to rescind all action by the selectmen operates as a discontinuance of the highway laid out by them.—*Brackett v. McIntire*, 72 N. H. 67.

Between This State and Vermont.—If authorized by their town, the selectmen of any town on the Connecticut river may unite with the selectmen or other proper officer of any contiguous town or towns in the state of Vermont and contract with them for the purchase of any real estate, or the privilege, easement, or franchise of any bridge or ferry corporation, if in their opinion the public good requires a highway to be laid out over said property, or so near thereto as to effect the value thereof. C. 67, S. 12.

They may agree as to the proportion of expense to be borne by each town in such purchase and in the construction and maintenance of a highway over said river including a bridge and the piers, abutments, and approaches thereto, and of the damages to persons injured in the use of such highway, subject to the approval of the town. *Ibid.*, S. 13.

The towns in question are the sole judges of what their interests require, and county commissioners have no authority to intervene.—*Stearns v. Hinsdale*, 61 N. H. 433.

Corporate Property Taken.—Any real estate, franchise, or easement of a corporation may be taken for a highway in the same manner as the estate of individuals. *Ibid.*, S. 14.

The statutes in force did not confer upon selectmen the power to lay out a highway over a turnpike road; such power could be exercised only by the legislature.—*Barber v. Andover*, 8 N. H. 398.

Commissioners are authorized to lay out highways including all bridges thereon. An award of damages to a bridge corporation for "their easement, interest and franchise in and to be found," etc., is a sufficient award for the franchise of a toll-bridge.—*State v. Canterbury*, 28 N. H. 195.

In the exercise of the power of eminent domain, a part or the whole of the franchise and property of a corporation, however exclusive or ancient the grant, may be taken for the public use, upon suitable compensation being made.—*Crosby v. Hanover*, 36 N. H. 404.

The taking by eminent domain of the easement of a turnpike corporation makes the road public and free and substitutes a public right for a right previously existing, partly public and partly private.—*Opinion of Justices*, 66 N. H. 646, citing *Pierce v. Somersworth*, 10 N. H. 369, 373.

Failure to notify a corporation of the time and place of a hearing renders proceedings to lay out a highway over land of the corporation void as to the corporation.—*Grand Trunk Ry. Co. v. Berlin*, 68 N. H. 169.

Subject to Gates and Bars.—Any highway may be laid out subject to gates and bars across the same. In such case it shall be determined,

and the return of the selectmen shall state, by whom the gates and bars shall be maintained. Whenever the public good requires it, they may be removed and further damages assessed upon like proceedings as in the laying out of highways. *Ibid.*, S. 15.

A highway, laid out for the accommodation of an individual by the selectmen, although subject to gates and bars, is still a public highway, and all persons having occasion are entitled to use it, and the town, being bound to keep it in repair, is liable for special damages caused by want of such repairs.—*Proctor v. Andover*, 42 N. H. 348; *Brown v. Brown*, 50 N. H. 538.

The selectmen cannot affix any other conditions in the laying out of a highway than those authorized by statute. Such new conditions are ineffectual.—*Underwood v. Bailey*, 56 N. H. 187.

Land cannot be compulsorily appropriated for a highway that would not accommodate the public.—*Ibid.* 59 N. H. 480.

Section 14, chapter 67, General Laws, does not require a highway laid out under that section to be laid subject to gates and bars.—*Bachelor v. New Hampton*, 60 N. H. 207.

For an Individual.—Whenever a highway will be of special advantage to any individual, the selectmen may require him to bear such portion of the land damages and expenses of constructing and maintaining it and the gates and bars across it, if any, or any of the same, as they may deem just; and the highway may be laid out subject to such condition. C. 67, S. 16.

Selectmen cannot amend their return of laying out a highway, so as to substitute a different intention for the one expressed in the return.—*Brown's Petition*, 51 N. H. 367.

A highway laid out for the accommodation of an individual may be laid out subject to gates and bars but to no other condition.—*Underwood v. Bailey*, 56 N. H. 187.

Fire district commissioners do not have the power to lay out highways conferred by law upon the selectmen.—*Henry v. Haverhill*, 67 N. H. 173.

Damages Assessed to Landowners.—They shall assess the damages sustained by each owner of the land or other property taken for such highway, and insert the same in their return. Those of the tenant and remainder-man or reversioner shall be assessed separately.

If the person to whom the damages should be awarded is unknown, a particular description of the estate, franchise, or property taken shall be inserted in their return, with the damages assessed therefor, without naming the person to whom awarded. *Ibid.*, SS. 18, 19.

The award of the selectmen is in the nature of a judgment. It is conclusive upon the town, but not on the landowner who has the right of appeal.—*Sparhawk v. Walpole*, 20 N. H. 319.

It is not necessary for road commissioners to state in their report that they have certified to the town clerk the damages awarded to the landowners.

Where land belonging to an insolvent estate is taken for a highway, an award of damages is properly made to the administrator of the estate, and not to the heirs.—*Goodwin v. Milton*, 25 N. H. 458.

In the laying out of a highway over mortgaged premises, the mortgagor in possession is ordinarily the proper person to be notified of the hearing and to receive the award of damages.—*Gurnsey v. Edwards*, 26 N. H. 224.

An award of damages to the guardian of a minor, as such, will be regarded

as an award to the minor, and payable only to a guardian properly authorized to receive it.—*Peavey v. Wolfborough*, 37 N. H. 286.

If in laying out a highway damages are awarded to one as a landowner, who is not entitled to damages, a release by him to the town of the damages awarded removes the exception.—*Berry v. Hebron*, 38 N. H. 196.

Where a highway is laid out and no notice given to some of the owners or damages awarded to them, the laying out is to that extent invalid.—*State v. Reed*, *Ibid.* 59.

In estimating the damages to landowners by a new highway, the road commissioners shall not deduct anything on account of benefits and advantages not peculiar to such landowner but which are general, and shared in by the other landowners in the vicinity.—*Whitcher v. Benton*, 50 N. H. 25.

"But we think it does not (the statute) include damages caused to him (an owner) by the building of the road over the land of another."—*Eaton v. B. C. & M. R. R.*, 51 N. H. 508.

Where the owner of land causes it to be surveyed into house lots with streets intersecting the same, causes a map of such survey to be recorded in the registry of deeds, and sells lots in conformity to such survey and map, he is entitled, *prima facie*, to no more than nominal damages when such streets are subsequently appropriated to public use.—*Walker v. Manchester*, 58 N. H. 438.

Lay-out in Adjoining Towns.—The selectmen of two adjoining towns acting jointly and by a vote of the major part of each board, may lay out any new highway, or alter any existing highway within such towns, for the accommodation of the public, in the same manner as selectmen are authorized to do in their respective towns; and they shall make return thereof as required in case of laying out by selectmen in their town, and cause the same to be recorded by the clerk of each of the towns.

The cost of such laying out or altering shall be apportioned between the towns by the selectmen acting as aforesaid; and their return shall not take effect until the apportionment is made. *Ibid.*, SS. 20, 21.

The selectmen have no authority to lay out a highway in their town where such highway forms but a part of a highway extending into another town, the whole of which, if any, is required for public accommodation.—*Griffin's Petition*, 27 N. H. 343.

Appeals lie to the supreme court held in two different counties and to the county commissioners of two counties and the latter make report to the court in the respective counties.—*Proprs. Bridge v. New Hampton*, 47 N. H. 151.

A petition for a new highway between two towns may be filed in the office of the clerk of the supreme court or may be presented to the selectmen of such towns acting jointly.—*Lord v. Dunbarton*, 54 N. H. 405.

Summer Cottages.—It shall be the duty of the selectmen to seasonably post or cause to be posted notices at the entrance of highways to summer cottages, of the closing and opening of the said highways. Acts 1893, C. 4, S. 2.

Winter Roads; Hearing.—The selectmen, upon petition, may, in any case where, in their judgment, the public good requires it, lay out a public road exclusively for winter use, such public road to be open as such only from November 15 till April 1, and they shall assess the damages to the owners of the land over which such public road may

pass in the form of yearly rentals. Hearings shall be had upon seven days' notice to landowners; in all other respects, except as herein provided, such laying out shall be subject to the same provisions as are now required by law in the laying out of an ordinary highway.

Unless the selectmen are clearly of opinion that the petition ought not to be granted, they shall cause notice in writing of a time and place of hearing appointed by them to be given to the first petitioner, and to the owners of the land over which the same may pass, fourteen days previous thereto. Acts 1897, C. 88, S. 1; C. 67, S. 3.

Owners of land over which a highway may be laid out are not entitled to notice of the pendency of the petition filed in court for that purpose, nor to controvert the facts alleged in the petition and admitted by default of the town.—*Toppan's Petition*, 24 N. H. 43.

Fourteen days' notice of the laying out of highways to towns and corporations is sufficient.—*Kennett's Petition*, 24 N. H. 139.

Proceedings of selectmen in laying out highways are judicial in character, and such laying out may be confirmed and objections to it waived by parties interested.—*State v. Richmond*, 26 N. H. 232.

In laying out a highway want of jurisdiction renders the proceedings void; irregularities and errors in the course of the proceedings make them merely voidable and they remain valid until legally avoided by the party or parties having legal right to interfere.—*State v. Weare*, 38 N. H. 314.

Return of Lay-out.—The selectmen shall, within thirty days, make a return of every highway by them laid out, describing the same, and the width thereof, and a like return of the alterations by them made in existing highways, with a particular description thereof, and cause the same to be recorded by the town clerk. C. 67, S. 17.

Where a highway was laid out by selectmen through the land of an individual at his request, it was *held* that the highway was legally laid out, notwithstanding it did not appear by the record that there was any application to the selectmen for the purpose in writing, nor any allowance made to the owner of the land for damage he might sustain.—*Hopkins v. Crombie*, 4 N. H. 520.

In laying out highways, monuments must govern, rather than courses and distances, in the same manner as, in conveyances of land, by metes and bounds.—*Miller v. Silsby*, 8 N. H. 474.

Where the report of a committee, laying out a highway, is accepted by the court of common pleas, the highway is thereby established and a record that the court adjudge that the highway be laid out is not essential.—*State v. Dover*, 10 N. H. 394.

The doings of selectmen in laying out highways under Stat. 1791 should be reduced to writing and lodged with the town clerk; and parol evidence of the laying out of a road under that statute cannot be received until the loss of the writings be shown.—*Greeley v. Quinby*, 22 N. H. 335.

When the selectmen refer for a particular description to a plan recorded in the registry of deeds in the same county, *held*, that such reference was properly made and that the description might be aided by such reference.—*Hall v. Manchester*, 39 N. H. 295.

A case where the original record made by the town clerk was burned by accident and secondary evidence of the return and laying out was admitted. *Held*, also that a majority of a board of selectmen may legally lay out and return a highway.—*Hall v. Manchester*, 40 N. H. 410.

"Under our laws the return is not a mere clerical formality, subsequent to the laying out. The highway is not legally laid out until the return has been made."—*Hayes v. Shackford*, 3 N. H. 10; *Greeley v. Quinby*, 22 N. H. 335.

In effect the return is the laying out. See Sawyer, J., in *Perkins v. Langmaid*, 36 N. H. 501, 507.—*Brown's Petition*, 51 N. H. 367.

In the laying out of a highway it is not necessary that the termini should be described in the exact language of the petition; it is sufficient if the laying out conforms substantially to the prayer of the petition.—*Bachelor v. New Hampton*, 60 N. H. 207.

In an action against a town for injuries upon a highway, the fact that the selectmen's certificate of the laying out of the highway was not returned to the town clerk and recorded as required by law, until after the expiration of thirty days, will not avail the defendants to show that there was no legal highway.—*Randall v. Conway*, 63 N. H. 513.

Regulate Use.—The selectmen may regulate the use of public highways, sidewalks, and commons in their respective towns, and for this purpose may exercise all the powers conferred upon city councils by section ten, subdivision seven, chapter fifty of the Public Statutes, and by any other provisions of law upon the subject. C. 43, S. 9.

Whether a railroad crossing over a highway should be covered with snow to put it into a reasonably safe and convenient condition for public use is a question of fact.—*Dickey v. Railroad*, 70 N. H. 34.

The statute prohibiting the riding of bicycles on the sidewalks by persons over twelve years of age is not in conflict with the State or Federal constitution.—*State v. Aldrich*, 70 N. H. 391.

Change of Grade; Damages.—If in repairing a highway by authority of the town, the grade is raised or lowered, or a ditch made at the side thereof whereby damage is occasioned to any estate adjoining, the selectmen on application of the owner, shall on notice to and hearing of the applicant, view the premises, and assess the damages, and within thirty days after the application file the same with their doings thereon in the office of the town clerk. Any benefit to the applicant shall be set off against his claim. C. 73, S. 24.

Where highway surveyors act in good faith, without malice, in repairing highways within the scope of their authority, they are not personally liable.—*Waldron v. Berry*, 51 N. H. 136.

An action for damages against a town does not lie where the grade of a highway is raised or lowered by authority of the town, but the landowner injured thereby may apply to the selectmen to assess the damages.—*Bartlett v. Bristol*, 66 N. H. 420.

When an owner of land or buildings is injured by an alteration or repairs of a highway, he may apply in writing to the selectmen of the town for redress, setting out his claim and the grounds thereof in a brief, comprehensive and intelligible form.

The selectmen having neglected or refused for thirty days to act on the application, he may file his petition in court, etc.—*Sawyer v. Keene*, 47 N. H. 173.

Gates Licensed.—The selectmen, upon application, may, by license recorded by the town clerk, permit any person to keep a gate upon any highway leading across a meadow, or intervale land liable to freshets, at a place therein designated, under such restrictions as they may judge proper; and they may at any time alter or revoke the license. C. 77, S. 10.

Repairs; Gravel Lot Taken.— When there shall be occasion for soil, gravel, or hardpan to repair the highways in any town, and the same cannot be obtained by agreement with the owner thereof, a lot not exceeding half an acre may be taken by the selectmen, upon petition for that purpose, for the use of the town, in the same way and manner and with the same right of appeal to the landowner as in the case of land taken for a highway. C. 73, S. 22.

Highway Taxes Apportioned.— When the whole tax in a surveyor's list, in the opinion of the selectmen, is not needed in his district, they may order a part thereof to be expended in another district.

When the taxes in any surveyor's list, from unforeseen accident, are insufficient for his district, the selectmen may order any other surveyor to cause the taxes, or any part thereof in his list, to be expended in that district. Acts 1899, C. 29, SS. 7, 8.

State Highways.— The general supervision, control, and direction of the improvement of main highways in the different towns under the act of 1905, chapter 35, which provides for state aid, are placed in the hands of the selectmen of such towns. The law provides that each town shall, of the amount of moneys annually raised and appropriated for the repair of its highways, set apart the following amounts for the permanent improvement of its main highways, such improvements to be made under the advice of the state engineer. Towns having a valuation of less than \$2,000,000, \$1 on each \$1,000; towns having a valuation of between \$2,000,000 and \$3,000,000, 75 cents on each \$1,000; and other towns in like proportion to their valuation.

If any town desires state aid for the purpose of making improvement of its highways under the provisions of this act, it may apply to the state authorities for such aid, which will be granted upon orders of the governor and council. The amounts received from the state vary according to the valuations of the several towns. The fund so contributed by the state, together with the amount set apart by the town for the improvement of highways, constitutes a joint fund to be used outside the compact portion of the town.

All work of highway improvement paid for out of such joint funds is performed in accordance with specifications provided by the governor and council; and contracts for such work of upwards of \$100, are awarded and executed by the governor and council, or such agent as they shall authorize, and the selectmen of the town. Any town by its selectmen, however, may bid for and execute a contract on behalf of the town for work done within its limits.

All highways improved by the expenditure of such joint funds shall thereafter be maintained by the town within which they are located, at the expense of the town, and to the satisfaction of the governor and council; and in case any town neglects to make repairs ordered by the

governor and council, they may be made under the direction of the governor and council at the expense of the state, and the cost thereof be added to the state tax of the town for the next year. Acts of 1905, C. 35.

Hospital Bed, Rates, Rules.—The rates, rules and regulations for admission of patients to a hospital under a contract therefor shall be approved by the selectmen before payment of any money to the hospital. Acts 1899, C. 13, S. 2.

Intelligence Offices, Licenses.—The selectmen of a town may grant licenses to suitable persons subject to the provisions of sections three to seven inclusive, and may revoke the same at pleasure. Acts 1901, C. 60, S. 3.

Junk Dealers, Licenses.—Selectmen of a town may license persons deemed by them to be suitable to be dealers in, and keepers of shops for the purchase and sale or barter of, old junk, old metals, old or second-hand bottles, second-hand articles, cotton or woolen mill waste, unfinished cloth, and cotton or woolen mill yarns in an unfinished state, not of family manufacture, within their towns, and may determine and designate the place where the business is to be carried on under a license.

The license shall designate the place where the business is to be carried on, and shall contain a condition that the person to whom it is granted shall not purchase from any minor under the age of sixteen years, nor barter with any such minor for any article named in the preceding section, without the written consent of his parent or guardian, and such other conditions and restrictions as may be prescribed by the selectmen, and shall continue in force until the first day of April next following, unless sooner revoked. C. 124, SS. 1, 2.

Lands Taken by United States.—Upon petition by officers or agents of the United States for the taking of lands, the selectmen shall appoint a hearing, give notice thereof, hear the parties, assess the damages and file their return with the town clerk as in the case of highways. C. 1, S. 3.

Militia, Enrollment Lists.—The selectmen of towns shall at such times as the commander-in-chief may direct, make an alphabetical list of all male citizens between the ages of eighteen and forty-five, living within their respective towns. On such lists, and opposite the name of each person exempt from military duty, or a minor, or in the national guard, the selectmen shall write "Exempt," and the reason of such exemption—"Minor" or "National guard," as the case may be. The selectmen shall subscribe said list, and make oath that the same is true to the best of their knowledge and belief, and shall file the same with

the clerk of their town on or before the first day of May in the year when made. Acts 1895, C. 59, S. 4.

Militia, Calling Out.—Upon receipt of an order from the commander-in-chief, the selectmen shall forthwith by written order, or oral notice to each individual, or by proclamation, appoint a time and place in their town, and shall then and there proceed to draft as many of the enrolled militia, or to accept as many volunteers as is required by the order of the commander-in chief, and shall forthwith forward to him a list of the persons so drafted or accepted as volunteers. *Ibid.*, S. 10.

Milk Inspectors Appointed.—The selectmen of towns may annually appoint one or more persons to be inspectors of milk, skim-milk and cream, under the same provisions and conditions as agents are appointed by boards of health. C. 127, S. 2.

Milk, Licenses to Sell.—The selectmen may grant to any person who applies therefor, and pays the sum of two dollars a license, to sell milk, skim-milk and cream within their town, until the first day of June next following, and may renew such license annually in the month of May upon application and payment of a like fee, providing such applicant shall satisfy said selectmen that he understands the care of said product, and files the name and address of all his producers, and gives reasonable assurance that the cows from which the milk is taken are healthy and are properly fed and cared for. *Ibid.*, S. 3.

They shall make a record of all licenses granted and renewed by them, which, together with all registries made with them, shall be open to public inspection, and shall pay to the treasurer of their town all fees received within thirty days after receipt. *Ibid.*, S. 7.

Inspection of Places.—The selectmen of towns and the inspectors appointed by them, may enter places where milk, skim-milk, or cream are stored or kept for sale, and into and upon carriages used for the conveyance thereof, and may take such samples of milk, skim-milk, or cream as they may deem necessary, upon payment of the current price therefor, and may examine the milk, skim-milk, or cream there found, and, if requested, shall leave a sample of the same product, securely sealed, with the person from whom said sample was taken, and if they have reason to believe that any such milk, skim-milk, or cream is adulterated they shall cause specimens thereof to be analyzed or otherwise satisfactorily tested and shall make a record of the result of the analysis or test. *Ibid.*, S. 6.

Record of Convictions.—A record shall be made and kept by the selectmen of each and every conviction in their respective cities and towns of any violation of the provisions of this chapter. *Ibid.*, S. 9.

Act in Force, Where.—The preceding sections shall be in force only in such towns and cities as now have inspectors of milk, and those which may hereafter adopt the same, but nothing in this act shall be construed as affecting any one who may at the time of the passage of this act be a regularly elected inspector of milk in any city in this state, so as to cut short his present term of office, or vary his salary. *Ibid.*, S. 11.

Mills and Mill Dams.—The selectmen, upon a petition of the owner of any part or share of a mill, mill dam, or flume, for the rebuilding or repairs of the same, charging neglect or refusal on the part of other owners to rebuild or make such repairs, shall appoint a time and place of hearing upon such petition and notify all persons interested of the same. They shall personally examine the premises, hear all persons interested, and, if they are of the opinion that the mill, mill dam, or flume ought to be rebuilt or repaired, they shall, by writing under their hands, order the owner to rebuild or repair, specifying the share of the expense and of the cost of the petition and hearing to be borne by each and the time and, if they think proper, the manner in which it shall be done.

If such mill, mill dam, or flume is situated in two or more towns, the petition shall be to the selectmen of all the towns, and like proceedings shall be had before them as a joint board. C. 142, SS. 2, 3, 4, 7, 10.

Selectmen may order repairs of mills where the property is owned by joint tenants or tenants in common, but they must be cotenants of the use of the mills, etc.; but if they lose the right to use, repairs cannot be ordered by the selectmen.—*Roberts v. Peavey*, 27 N. H. 477.

Nuisances; Health Officers' Regulations.—The health officers of towns may make regulations for the prevention and removal of nuisances, and such other regulations relating to the public health, as in their judgment the health and safety of the people require, subject to approval by the selectmen. C. 108, S. 1.

The statute which imposes a penalty for occupying a building in the compact part of a town, as a slaughter-house, without license, does not repeal the common law relative to nuisances.—*State v. Wilson*, 43 N. H. 415.

The health officers of a town cannot make the town liable for medicines and medical services furnished to inhabitants who are not paupers.—*McIntire v. Pembroke*, 53 N. H. 462.

In some cases health officers may abate nuisances without notice, *e. g.*, a vessel attempting to pass quarantine into Portsmouth harbor.—*State v. Saunders*, 66 N. H. 80.

Officers, Other, Duties Performed.—If any town fails to choose agents, overseers of the poor, firewards, or any of them, or there is a vacancy in any of such offices, the selectmen shall discharge the duties and have the powers of such offices until the same are filled by election or appointment, as provided by law. C. 43, S. 40.

Selectmen are agents of the towns when no other agents are chosen. An unqualified offer by them to pay for damages from a defective highway is

competent but not conclusive evidence on the question of the liability of the town.—*Gray v. Rollingsford*, 58 N. H. 253.

Parks, Public Authorized.—The selectmen shall not lay out, establish, or enlarge a park or common unless the town shall have voted in favor thereof. C. 51, S. 6.

Payments to Treasurer; Orders; Accounts.—The selectmen shall pay all sums of money received by them in behalf of the town to the town treasurer immediately after receipt, and state to him from whom and for what received. They shall draw orders upon the treasurer for the payment of all accounts and claims against the town allowed by them, and take proper vouchers therefor. They shall keep a fair and correct account of all moneys received, all accounts and claims settled, and all orders drawn by them, and of all their other financial transactions in behalf of the town. C. 43, S. 7.

Petroleum Dealers Licensed.—Licenses may be granted by the selectmen to persons who manufacture, refine, mix, store, or keep for sale any oil, or fluid composed wholly or in part of any of the products of petroleum. They shall continue in force from the time of granting the same until the first day of April next succeeding, unless sooner revoked, but they may be revoked at any time by the authority granting them. C. 126, S. 30.

Petroleum Inspector Appointed.—The selectmen of every town, upon the written request of five or more citizens of such town therefor, upon the written request of five or more citizens of such town therefor, shall annually appoint one or more suitable persons not interested in the sale of crude petroleum, or in the sale and manufacture of petroleum, earth-rock oil, or any of their products, or who is not an employee of any person so interested, to be inspectors thereof in such town, and shall fix their compensation to be paid by persons requiring their services, and who, before entering upon the duties of their office, shall be duly sworn. *Ibid.*, S. 25.

It is not the duty of an inspector to inspect oil when not requested to render that service, and he cannot recover for an inspection made without defendant's request and against his objection.—*Hanson v. Maverick Oil Co.*, 67 N. H. 201.

Plumbing Inspectors Appointed.—In towns which have by by-law provided therefor, the selectmen shall appoint a board for the examination of plumbers which shall consist of the following three persons: A member of the local board of health, the town engineer, or in the absence of such officer, a local physician in regular practice, and a journeyman plumber of not less than five years' active and continuous practical experience. Acts 1899, C. 55, S. 3.

Railroad Stock, Vote.—The selectmen of any town holding stock in any railroad as trustee or otherwise are authorized to vote thereon at

all meetings of such corporation, and may appoint in writing, an agent for that purpose. C. 40, S. 18.

Declares statute constitutional.—*Perry v. Keene*, 56 N. H. 514.

Records, Public, Preserved.—The selectmen shall cause all books of public record belonging to the town to be well and strongly bound and all papers and documents to be filed and arranged in an orderly manner, convenient for reference and examination and shall provide suitable fireproof safes or other means for their care and preservation, all at the expense of the town. C. 43, S. 43.

Copies.—The selectmen may authorize and direct the town clerk to make in suitable books true copies of any of the public records of the town which have become so faded, worn out or otherwise defaced that in their judgment it is necessary they should be copied in order to insure the preservation of the facts or instruments recorded. *Ibid.*, S. 44.

Rewards.—The selectmen of a town are authorized, whenever in their opinion the public good requires it, to offer and pay from the treasury of such town a suitable reward, not exceeding \$300, in any one case, for the apprehension of any person or persons charged with having committed a capital or other high crime. C. 261, S. 1.

Riots Suppressed.—The selectmen of any town are authorized, at the expense of the town, to call out sufficient military force to suppress or prevent a mob or riot within its limits. C. 40, S. 16.

Schools, Annexation of Districts.—Any person interested in severing part of any town therefrom and annexing it to another town, or school district therein, for school purposes, may apply therefor by petition to the selectmen of the town from which it is proposed to sever such territory, and to the selectmen of the town to which it is proposed to annex the same.

It shall be the duty of said selectmen, upon notice to such petitioners and to the school boards of the respective towns or school districts interested in the proposed transfer, to hear the parties, and determine whether the reasonable accommodation of such petitioners or others requires such transfer, and to make return of their findings to the clerks of their respective towns in writing within thirty days.

If a majority of each of said boards of selectmen report in favor of such transfer, they shall sign a certificate of that fact, describing such territory, and stating that it is annexed to such adjoining town, or district therein, for school purposes, which certificate shall be recorded by the town clerk of each town.

Any territory now or hereafter annexed for school purposes to an adjoining town or school district therein, may, upon proceedings such

as have been prescribed in the foregoing sections of this act, be restored to the town or district from which it has been severed.

The annexation of territory under this act shall have the same force and validity as if made by a special act of the legislature.

The selectmen and collector of any town to which part of any other town is now or may hereafter be annexed for school purposes shall have the same powers and duties in respect to such annexed territory, of furnishing blank inventories and of assessing and collecting taxes for school purposes, and the inhabitants and owners thereof shall for such purposes be subject to the same liabilities, as if such territory were in the town to whom it is or may be annexed. Acts 1893, C. 72, SS. 1-6.

Parts of Districts United.—The selectmen of any town, and the school board of any high school or other special district in the same town, may, upon petition of persons interested, after notice to the school board of the town school district of such town, and after hearing the parties, unite parts of either district to the other, a majority of the board of selectmen and a majority of the school board of such special district and a majority of the school board of the town school district concurring therein, and their decision in writing being recorded in the town records. *Ibid.*, S. 7.

Schoolhouses, Land Appraised.—If any school district shall neglect or refuse to procure the lot of land selected for the location of a schoolhouse or for the enlargement of an existing schoolhouse lot as provided in this chapter, or if the owner of the land shall refuse to sell the same to the district for a reasonable price, the selectmen upon petition to them by the school board or by three or more voters of the district, shall appraise the damages occasioned to the landowner by the taking of his land. The appraisal shall be made in writing, and be filed with the clerk of the district. C. 91, S. 13.

An unqualified refusal to sell land selected by a committee as the location of a schoolhouse, without calling for the authority of the party applying, would be a sufficient refusal to justify the selectmen in setting off the land.—*True v. Melvin*, 43 N. H. 503.

Shade Trees, Removal.—If any owner of real estate desires to remove any shade or ornamental tree situate within the limits of any public street, he shall first obtain leave of the selectmen, or conform to the regulations which the town may have provided relative to shade trees. C. 40, S. 10.

Shows, Billiard Tables, Etc., Licenses.—The selectmen may grant licenses to showmen, tumblers, rope dancers, ventriloquists, and other persons desiring to give exhibitions for the amusement of the public and for theatrical or dramatic representations, upon the payment of a license to be fixed by the selectmen, payable in advance, not less than

one dollar nor more than three hundred dollars, for each day, provided that a license to exhibit in any hall shall not exceed \$50.00.

They may also grant licenses to persons to keep billiard-tables, pool-tables, or bowling-alleys, for hire, upon such terms and conditions as they may deem proper, but not for the purpose of gaming for money or other property. Such license may be revoked at the pleasure of the selectmen. Licenses so granted shall be valid until the first day of May next after the granting thereof, unless sooner revoked.

The annual license fee shall be \$10.00 for every billiard-table, pool-table, or bowling-alley. C. 114, SS. 1, 2, 3, 5, 6, 7.

Smallpox.—The selectmen, upon notice from a physician that there is any person in the town whom he suspects is infected with smallpox, shall immediately quarantine such person, and notify the state board of health and request it to investigate the case forthwith. Acts of 1903, C. 45.

Spirituous Liquor, Prosecutions.—The selectmen of towns shall prosecute, at the expense of the town, every person guilty of a violation of any of the provisions of chapter 112, or amendments thereto, of which they can obtain reasonable proof; and if any selectman shall neglect or refuse to perform his duty as specified in this section he shall be fined or forfeit three hundred dollars for each and every such neglect or refusal. C. 112, S. 23.

Street Railways, Location.—All parts of street railways occupying any portion of a public highway or street, shall be located thereon by the selectmen of the towns in which the same may be. The selectmen, after the determination by them that the public good requires the building of the proposed railway on the proposed route, upon petition of the directors of such railway corporation, shall give notice by publication to all parties interested of the time and place at which they will consider such petition for the location of such railway; and after a public hearing of all persons interested they may make an order granting the same or any portion thereof, under such restrictions and upon such conditions as they may deem the interests of the public require; and the location thus granted shall be deemed to be the true location of the tracks of the railway. Such location may be changed at any time to other parts of the same highway or street by subsequent order of said selectmen, or their successors in office, if in their judgment the public good requires such change, upon petition of any party interested and after a public hearing of all parties.

The selectmen shall assess damages to abutters, subject to the right of appeal, in the same manner as now provided by law in the laying out of highways. Acts of 1895, C. 27, S. 5.

The selectmen of towns shall, within their respective towns, have

jurisdiction to locate the tracks, side tracks, turnouts, and poles of a street railway, and may order a street railway company to discontinue temporarily the use of any of its tracks in public highways, whenever they deem that the safety and convenience of the public require such discontinuance, without incurring any liability therefor. *Ibid.*, S. 6.

Street Railways, Speed Regulated.—Full authority is given to the selectmen of towns to regulate the speed of railway cars running over streets and highways. Acts of 1899, C. 61, S. 1.

Supervision.—The selectmen of towns may designate the quality and kind of materials to be used in the construction of said railway and any part thereof, and may from time to time make such reasonable orders, rules, and regulations with reference to that portion of the street railway occupying the public highway, as to rate of speed, the manner of operating the railway, the kind of motive power that may be used, the reconstruction of tracks, poles, wires, switches, turnouts within any highway, and the care of such highway in their respective towns, as the interest or convenience of the public may require; and all designations, orders, rules, and regulations thus made or established shall be forthwith recorded in the records of said towns. The railway company, or any person interested, may at any time appeal from such designations, orders, rules, and regulations thus made and established, to the board of railroad commissioners, who shall, upon notice, hear the parties, and finally determine the questions raised by said appeal. *Ibid.*, S. 7, amended by Acts of 1903, C. 94, S. 1.

Swamp Lands, Improvement.—Selectmen, upon petition, may cause any low or swamp lands within their town to be drained or filled when the public health or good or the advancement of agriculture requires it, and may lay out and take such land, easements, or rights in land as may be necessary for the purpose.

The procedure and return in such case shall be the same as in case of the laying out of highways; and all parties whose interests are affected thereby shall have the same remedies as they would have if their land, easements, or rights had been taken in the laying out of a highway. C. 109, SS. 1, 2.

TAXATION.

State Tax.—An apportionment of public taxes, according to the valuations of the polls and ratable estates in the several towns, is made by the legislature once in four years. The legislature at each biennial session orders the assessment of a state tax for each of the two fiscal years next ensuing, specifying the amount and time of payment for

each year, and the assessments for such years are made as nearly equal in amount as may be. C. 14, SS. 1, 2.

Collateral Inheritance Tax.—Under the provisions of chapter 40 of the Acts of 1905, a tax of five per cent of its value is imposed upon all property within the jurisdiction of the state, real or personal, and any interest therein, whether belonging to the inhabitants of the state, or not, which shall pass by will, or by the laws regulating intestate succession, or by deed, grant, sale, or gift, made or intended to take effect in possession, or enjoyment after the death of the grantor, to any person, absolutely or in trust, except to or for the use of the father, mother, husband, wife, lineal descendant, brother, sister, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband or the daughter, of a decedent, or to or for the use of charitable, educational or religious societies or institutions in this state, the property of which is by law exempt from taxation, or to a city or town in this state for public purposes. Such tax shall be for the use of the state, and administrators, executors and trustees, and any such grantees, under a conveyance made during the grantor's life, shall be liable for such taxes with interest, until the same shall be paid. Acts of 1905, C. 40.

Poll-taxes.—All male polls from twenty-one to seventy years of age are liable to be taxed, except paupers, insane persons and others exempt by special provisions of law. C. 55, S. 1.

Real Estate.—Real estate, whether improved or unimproved, or whether owned by residents or others, is liable to be taxed, except houses of public worship, twenty-five hundred dollars of the value of parsonages owned by religious societies, and occupied by their pastors, schoolhouses, seminaries of learning, real estate of the United States, state, or town, used for public purposes, and almshouses on county farms. *Ibid.*, S. 2.

Under statute of July 7, 1827, lands in the possession of an occupant cannot be taxed as non-resident lands.—*Brewster v. Hough*, 10 N. H. 138.

Real estate of corporations as of individuals is taxable only in the towns where it is situated.—*Cocheo Mfg. Co. v. Strafford*, 51 N. H. 455.

Real estate owned by a savings bank and purchased with the deposits and accumulations of the bank is not, under the statute of 1869, chapter 4, subject to taxation as real estate in the place where it is situated.—*Savings Bank v. Portsmouth*, 52 N. H. 17.

Lands and buildings used exclusively for an academy or seminary, agreeably to the faith and practice of the Roman Catholic church and for dormitories and convenient out-buildings in connection therewith, are exempt from taxation by the provisions of General Statutes, chapter 49, § 2.—*Ward v. Manchester*, 56 N. H. 508.

Mortgaged property may be taxed to the mortgagor in possession.—*Morrison v. Manchester*, 58 N. H. 538.

The constitution of New Hampshire does not exempt church property from taxation.—*Society v. Manchester*, 60 N. H. 342.

Rights in a reservoir of water are real estate and taxable in the town where

the land by which the reservoir is created is situated.—*Manufacturing Co. v. Gilford*, 64 N. H. 337.

When a mill pond is in towns A and B and water power is wholly used in B, a right of flowing water in A is taxable in A and not in B.—*Amoskeag Co. v. Concord*, 66 N. H. 562.

Taxation of the owner of real estate because of his net income from it for a sum which if placed at interest would produce a sum equal to such income, is in effect taxation of the real estate, and is not authorized by law.—*Kenard v. Manchester*, 68 N. H. 61.

County farms are subject to taxation, but courthouses and jails are not, although not included in the list of property exempted from taxation by law.—*Grafton Co. v. Haverhill*, 68 N. H. 120.

Real estate in the possession of a tenant in common should be taxed to him as resident. An omission to assess a tax against the known owner and occupant of real estate and its erroneous assessment in the non-resident list are sufficient to invalidate a collector's sale.—*Randall v. Watson*, 70 N. H. 236.

Buildings.—Buildings, mills, carding machines, factory buildings and machinery, wharves, ferries, toll-bridges, locks and canals, and aqueducts, any portion of the water of which is sold or rented for pay, are taxable as real estate. C. 55, S. 3.

Notwithstanding a charter of a corporation exempted from taxation the buildings and machinery and capital, it was held that a store of goods owned by the corporation was not within the exemption.—*Souhegan Factory v. McConihe*, 7 N. H. 309.

Toll-bridges owned by corporations are to be taxed to them. Such bridges across the Connecticut river are taxable in this state.—*Cornish Bridge v. Richardson*, 8 N. H. 207.

Mines, Ores.—Real estate shall be taxed independently of any mines or ores contained therein, until such mines or ores shall become a source of profit. *Ibid.*, S. 4.

Railroad Lands.—The real estate of railroad, telegraph, and telephone corporations and companies, not used in their ordinary business, shall be appraised and taxed by the authorities of the towns in which it is situated. *Ibid.*, S. 6.

Electric Light and Power Plants.—Lands, dams, canals, water power, buildings, structures, machinery, dynamos, apparatus, poles, wires, fixtures of all kinds and descriptions owned, operated and employed by any private corporation or person, not a municipal corporation, in generating, producing, supplying and distributing electric power or light, shall be taxed as real estate in the town or towns in which said property or any part of it is situated.

If such property is situated in or extends into more than one town, it shall be taxed in each town according to the value of that part and proportion of the same lying within its limits.

It shall be classified for purposes of taxation with the property described in section 3 of chapter 55 of the Public Statutes. Acts of 1905, C. 42, SS. 1, 2, 3.

Personal Estate.—Personal estate liable to be taxed is—

(1) Stock in public funds, including all United States, state, county,

city, or town stocks or bonds, and all other interest-bearing bonds not exempt from taxation by the laws of the United States.

A tax upon bonds and other securities given for loans of money to the United States duly authorized by act of Congress is in conflict with the constitution of the United States and utterly void.—*Opinion of the Justices*, 53 N. H. 634.

(2) Stock in corporations in the state, except where the property represented by the stock is taxable directly to the corporation.

The property of manufacturing corporations is taxable to the corporation in the town where the property is situated. The act of January 4, 1833, does not authorize taxation of stock in such companies to the owners of the shares.—*Smith v. Burley*, 9 N. H. 423.

If a savings bank owns stock in another corporation, the bank is not taxable for the stock in the town or place where the bank is situated.—*Nashua Savings Bank v. City of Nashua*, 46 N. H. 389.

A tax cannot lawfully be assessed against property of a corporation when its stock is at the same time taxed to its owners.—*Cheshire County Tel. Co. v. The State*, 63 N. H. 167.

(3) Stock in corporations located out of the state, owned by persons living in the state, except where either the stock or the property represented by it is taxed in the towns or states where the corporations are located.

If a railroad corporation is situated in another state, and the road or its property is taxed in that state to the corporation on the same valuation and at the same rate as the property of individuals, a stockholder residing in this state is not liable to be taxed here for his stock in the road.—*Smith v. The Town of Exeter*, 37 N. H. 556.

The deposit in a savings bank in Massachusetts, being taxable there, is not taxable in this state.—*Berry v. Windham*, 59 N. H. 290; *Robinson v. Dover*, *Ibid.* 521.

(4) The surplus capital on hand of banking institutions.

The taxation by a state of the surplus capital of a national bank, in excess of the amount they are required to carry to their surplus fund, is not prohibited by Congress nor an encroachment upon the constitutional powers of the Federal government.—*First Nat'l Bank v. Peterborough*, 56 N. H. 38; *Strafford Nat'l Bank v. Dover*, 58 N. H. 316; *First Nat'l Bank v. Concord*, 59 N. H. 75; *Peavey v. Greenfield*, 64 N. H. 284.

The guaranty fund of a savings bank is not taxable as surplus capital in the town where the bank is located.—*Laconia Savings Bank v. Laconia*, 67 N. H. 324.

(5) Money on hand or at interest more than the owner pays interest for, including money deposited in any bank other than a savings bank within this state, or loaned on any mortgage, pledge, obligation, note or other security, whether on interest or interest be paid or received in advance.

When an administrator puts money belonging to the estate of his intestate out at interest, he is liable to be taxed for such portion of money as may on settlement belong to himself.—*Willard v. Wetherbee*, 4 N. H. 118.

Deposits in savings banks are not taxable twice, once to the bank and again to the depositors.—*Perry v. Windham*, 59 N. H. 288.

Money invested in the bonds of a railroad corporation incorporated in this state is taxable as money at interest.—*Sawyer v. Nashua*, 59 N. H. 404.

(6) Stock in trade, whether of merchants, shopkeepers, mechanics, or tradesmen employed in their trade or business, reckoning the same at the average value thereof for the year; and for purposes of taxation, raw materials and manufactures of any manufactory, wood, timber, logs, and lumber, manufactured or otherwise, if exceeding fifty dollars in value, and fishing vessels, steamboats, horse-boats, or other vessels owned by individuals and navigating the waters of the state for the transportation of passengers or freight, and sea-going vessels, shall be deemed stock in trade.

(7) Vehicles, the aggregate value of which exceeds one hundred dollars.

(8) Horses, asses, and mules over eighteen months old.

(9) Oxen, cows, and other neat stock over eighteen months old.

(10) Sheep and hogs over one year old; but two such hogs to each family shall be exempt from taxation. (11) Fowls of every description exceeding fifty dollars in value. C. 55, S. 7.

Boats.—All boats and launches of every description, whatever their motive power may be, the aggregate value of which exceeds one hundred dollars, shall be taxed to the owner thereof in the town where the owner resides, if in the state, otherwise where the property is located on the first day of April. Acts of 1905, C. 25, S. 1.

Floating Timber, Logs, Etc.—Timber, logs, and lumber lying in or upon any body of water of this state, outside the boundary or limits of any town therein, shall be taxed at its full value in the town nearest and opposite such property. C. 56, S. 19.

The selectmen of said town shall, at the usual time of appraisal, make an inventory of the said property, and shall give notice to the owner thereof or his agent, immediately after the assessment of the town tax, stating the amount of taxes thereon. *Ibid.*, S. 20.

Logs situated in an unincorporated place are not subject to taxation by the town nearest and opposite. The power to tax them resides in the state and county.—*Mills Co. v. Location*, 60 N. H. 156.

Logs not legally taxed elsewhere are taxable as stock in trade by the town into which they are brought for manufacture, although brought in after the first day of April and shipped out of the state in form of lumber before the expiration of the year.—*Conn. Valley Lumber Co. v. Monroe*, 71 N. H. 473.

Portable Mills.—Every portable mill shall be taxed as personal property at its full value in the town where it is on the first day of April, to the owner, if he then resides in such town, otherwise to the owner or person having it in his care or custody on that day. Acts of 1905, C. 15, S. 1.

April Invoice.—The selectmen of each town shall, annually, in April, take an invoice of all the polls and estates liable to be taxed in such town on the first day of that month. C. 57, S. 1.

A town cannot by grant or stipulation in a conveyance exempt land from taxation. The taxing power is vested in the people and by them delegated to the legislature.— *Mack v. Jones*, 21 N. H. 393.

Unless there be evidence to the contrary, the presumption is that the selectmen make an invoice seasonably, in the month of April.— *Gordon v. Norris*, 29 N. H. 198.

Railroad Shares.— The selectmen shall annually take an invoice of the shares of stock of each railroad corporation of the state owned by inhabitants of their town on the first day of April, and shall transmit to the state treasurer, on or before the first day of June, a statement under oath, showing the number of shares of each corporation thus owned, the names of such stockholders, the number of shares owned by each in each corporation, and that such stockholders were inhabitants of the town on the first day of April. If they shall neglect to comply with the foregoing provisions, they shall be liable to the town for all damages resulting to it from their default. *Ibid.*, S. 2.

Railroad Shares, Failure to Invoice.— If the selectmen of any town shall neglect to take an invoice of the shares of railroad corporations in this state owned by the inhabitants of the town, and to transmit to the state treasurer a statement thereof under oath as required by section two, chapter fifty-seven of the Public Statutes, such town shall receive no part of the railroad taxes. C. 64, S. 16.

Blank Invoices and Inventories.— The secretary of state shall prepare and seasonably furnish to the selectmen and assessors of the several towns blank invoice books, and, annually, before the first day of March, he shall prepare and furnish to the selectmen of each town blank inventories in convenient form, sufficient in number to meet the requirements of this chapter and of all laws relating to the taxation of estates. C. 57, SS. 3, 4.

Blanks Distributed.— The selectmen or assessors, at the time mentioned in the following section, shall cause copies of such blank inventories to be given to all persons and corporations within their respective towns, who are taxable therein for any real or personal estate. Such blanks may be given in hand to such persons or to the president, clerk or manager of the business of such corporations, or be left at their usual place of abode or business. *Ibid.*, S. 6.

Towns by vote at any legal meeting may authorize the selectmen or assessors to distribute the blank inventories at the time they examine and appraise the property to be taxed; otherwise they shall be distributed on or before the twentieth day of March in each year. *Ibid.*, S. 7.

A party who in giving to the selectmen an account of his taxable property has been guilty of a fraudulent concealment of part of his estate, may be legally taxed for the fraud without a hearing before the selectmen.— *Willard v. Wetherbee*, 4 N. H. 118.

The inhabitant of a town who, on being called on by the selectmen for an invoice, who does not give in an account of his property but says, in relation to a part of it, that he is willing to be set down for a certain sum—the selectmen may doom him such sum as they may think just and proper.—*Tucker v. Aiken*, 7 N. H. 113.

When a person renders a true account of the polls and ratable estate for which he is liable to be taxed, upon the personal application of the selectmen and the same is received by them without objection, he will not be required to render a second account by reason of a public notice by the selectmen publicly posted.—*Melvin v. Weare*, 56 N. H. 436.

Inventory Received.—The selectmen and assessors are authorized to receive such inventory before the first day of May from any person or corporation who was prevented from making and returning the same on or before the fifteenth day of April by accident, mistake, or misfortune. *Ibid.*, S. 12.

Selectmen have no authority to waive the filing of the tax inventory required by chapter 57, § 8, of the Public Statutes. The right of appeal to the supreme court for abatement is not lost by failure to comply with the requirement for filing an inventory, through accident, mistake, or misfortune.—*Parsons v. Durham*, 70 N. H. 44.

Notice of Hearing on Inventory.—The selectmen or assessors shall, on or before the second Monday of April in each year, give public notice of the times when and places where they will receive such inventories, and hear all parties regarding their liability to be taxed. They shall state therein the time when such hearings will begin and close. Such notice shall be posted in one or more public places in the town, and shall be given in any other manner they think proper. *Ibid.*, S. 13.

Return of Inventory.—Upon the return of such inventory, the selectmen shall assess a tax against the person or corporation in accordance with their appraisal of the property therein mentioned, unless they shall be of opinion that it does not contain a full and true statement of the property for which such person or corporation is taxable. *Ibid.*, S. 14.

Personal Application.—The selectmen, or either of them, may make personal application to any inhabitants of the town, to any person having the care of personal property taxable therein, and to the officers of any corporation, for an account of the polls and ratable estate for which they are liable to be taxed. *Ibid.*, S. 17.

Doomage.—If any person or corporation shall willfully omit to make and return such inventory or to answer any interrogatory therein contained, or shall make any false statement therein, or if the selectmen or assessors shall be of opinion that the inventory returned does not contain a full, correct, and truthful statement of the property for which the person or corporation is taxable, the selectmen or assessors shall ascertain in such way as they may be able, and as nearly as practicable, the amount and value of the property taxable, and shall set

down to such person or corporation by way of doomsage four times as much as such property would be taxable if truly returned and inventoried. *Ibid.*, S. 15.

Individuals, when requested by the selectmen, must make sworn returns of property for taxation, or they may be legally doomed.—*Willard v. Wetherbee*, 4 N. H. 118.

If an inhabitant of a town, on being called upon by the selectmen for an invoice, does not give in an account of his property taxable by law, but says, in relation to a portion of it, that he is willing to be set down a certain sum.—this is a neglect to give in his invoice and the selectmen are authorized to doom him in the taxes of that year as they judge just and equitable.—*Tucker v. Aiken*, 7 N. H. 113.

Where in the absence of an individual a member of his family gives in his invoice, on the application of the selectmen, and it is received without objection, they cannot doom without notice that the invoice so given is not satisfactory. One who is wrongfully doomed by selectmen may have his remedy in case or trespass at his election.—*Walker v. Cochran*, 8 N. H. 166.

The omission to give a correct account of taxable property which authorizes the imposition of a four-fold tax must be willful and fraudulent.—*Perry's Petition*, 16 N. H. 44.

When the selectmen set down by way of doomsage as much as they judge equitable, it is not necessary that they should specify the nature of the property, as being in money, cattle, land, etc.—*Gordon v. Norris*, 29 N. H. 198.

The right of appeal to the supreme court by petition for abatement of taxes is not lost by non-compliance with the requirements of Gen. Stat., chapter 51, § 4, when the petitioner was prevented from exhibiting an account by reason of accident, mistake or misfortune without fault on his part.—*Trust & Guaranty Co. v. Portsmouth*, 59 N. H. 33.

Selectmen imposing doomsage upon one omitting to file the inventory required by law act in a judicial capacity, and are not liable for errors of judgment, unintentional mistakes, or irregularities in the assessment.—*Fawcett v. Dole*, 67 N. H. 168.

Appraisal, How Made.—The selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of shares in corporations and other property the value of which cannot be determined by personal examination. They shall deduct from the appraised value of shares in any corporation a just proportion of the value of any estate of such corporation which shall be otherwise legally taxed, upon satisfactory evidence thereof under oath. C. 58, S. 1.

A collector appointed by the selectmen held not liable for his acts as such in a given case as trespasser.—*Hayes v. Hanson*, 12 N. H. 284.

In the absence of proof, it will be presumed that the selectmen had knowledge or competent evidence of the value of the lands taxed, when the assessment was made.—*Dewey v. Stratford*, 42 N. H. 282.

Real estate of corporations as of individuals is taxable only in the towns where it is situated.—*Cochecho Mfg. Co. v. Stratford*, 51 N. H. 455.

The appraisal complained of may be compared with the appraisal of other real estate in the same town for the purpose of ascertaining whether the assessment was proportional and whether justice requires an abatement.—*Manchester Mills v. Manchester*, 58 N. H. 38.

A tax cannot lawfully be assessed against the property of a corporation when the stock of the corporation is at the same time taxed to its owners.—*Cheshire Co. Telephone Co. v. The State*, 63 N. H. 167.

Separate Interests in Real Estate.—Whenever it shall appear to the selectmen that several persons are owners of distinct interests in the same real estate, or that one person is owner of land and another is the owner of any building, timber, or wood standing thereon, or ores or minerals therein, they shall, upon request, appraise such interests and assess the same to the owners thereof separately. *Ibid.*, S. 2.

An assessment of a joint and individual tax upon lots of land owned by different persons is not authorized by the statutes, and is not legalized by a general healing act.—*Mowry v. Blandin*, 64 N. H. 3.

Property Classified.—The selectmen shall set down in their invoice, in separate columns, the value of improved and unimproved land; of buildings separately assessed; of mills, carding-machines, factories and their machinery, wharves, ferries, toll-bridges, locks and canals, and aqueducts; of stocks in public funds; of shares in banks and other corporations; the amount of money on hand, at interest or on deposit; the value of stock in trade; of carriages; the number and value of horses, asses, and mules; of cows, oxen, and other neat stock; and of sheep, hogs and fowls. *Ibid.*, S. 3.

The tax upon real estate under a mortgage is properly assessed against the mortgagor in possession.—*Drew v. Morrill*, 62 N. H. 25.

Invoices of Lands.—In making the invoice, the selectmen shall set down in the column of improved and unimproved land, all buildings situate on such land and owned by the owners thereof, except such buildings as are named in section three of this chapter. C. 58, S. 4.

Separate Appraisal.—Whenever it shall appear to the selectmen or assessors that two or more tracts of land which do not adjoin or are situated so as to become a separate estate have the same owner, they shall appraise and describe each tract separately, and cause such appraisal and description to appear in the invoice. Acts of 1903, C. 24.

Stud-horses and Jackasses.—The selectmen shall appraise and assess in all taxes of the year, every stud-horse or jackass kept in the town for the use of mares, at any time after the first day of April, and may require the owner or person having the care of such animal to give security to pay the tax thereon, or produce satisfactory proof within thirty days that such animal has been duly taxed in some other town in this state. C. 56, S. 31.

If such security be not given, the owner or keeper of such horse or jackass shall forfeit three times the amount of the tax so assessed for the use of the town. *Ibid.*, S. 32.

Property of Insane.—The selectmen shall make such deductions from the appraised value of the property of insane persons as they shall think just and reasonable, whenever it shall appear that the income of their estates is not sufficient to support them. C. 58, S. 5.

Oath to Invoices and Assessments.—The selectmen and assessors shall take and subscribe upon the copies or original invoices and assessments furnished by them to the town clerks in their respective towns, to be recorded in the clerks' records, the oath given in the statute, which may be subscribed before any justice of the peace or notary public. *Ibid.*, S. 6.

The statute requiring the invoice and assessment to be signed and sworn to by the selectmen and assessors is directory merely, and neglect to comply with it does not invalidate the assessment.—*Odiorne v. Rand*, 59 N. H. 504.

The signing of the official certificate of assessment by a majority of the board of assessors is sufficient.—*Drew v. Morrill*, 62 N. H. 23.

Appraisal Each Year.—The assessors and selectmen shall in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value in the year next preceding, and shall correct all errors that they find in the then existing appraisal; and such corrected appraisal shall be made a part of the invoice in such cities and towns; and the invoice thus revised shall be sworn to as provided in section six of this chapter. C. 58, S. 7.

List of Non-residents.—A list of the taxes assessed on the real estate of persons not resident in the town shall be made by the selectmen under their hands, in which shall be inserted the name of the owner, if known; otherwise the name of the original owner, if known; the number of the lot and range, if lotted, otherwise, such description as the land may be readily known by; the number of acres, and the amount of taxes assessed thereon. C. 61, S. 1.

Such list shall be delivered to the collector on or before the thirtieth day of June. *Ibid.*, S. 2.

In case of the assessment of taxes on land of a non-resident, the number of range and lot, or some other description of the land taxed must in all cases be inserted in the list.—*Brown v. Dinsmoor*, 3 N. H. 103.

In the list of non-resident taxes it is not necessary to state that the original proprietor and owner are unknown where the fact is so. When the names are not stated in the list they will be presumed to be unknown until the contrary appears.—*Proprietors of Cardigan v. Page*, 6 N. H. 182.

A lot of land belonging to an inhabitant of a town was held to be rightly taxed as land of a non-resident, the owner having omitted to notice it in the inventory of his taxable estate, which he gave to the selectmen, and it not being known to the selectmen that he was the owner.—*Nelson v. Pierce*, 6 N. H. 194.

Under statute of July 7, 1827, lands in the possession of an occupant cannot be taxed as non-resident lands.—*Brewster v. Hough*, 10 N. H. 138.

If in the assessment of taxes a part only of the land of a non-resident be included, the assessment will not, for that cause, be invalid.—*Smith v. Messer*, 17 N. H. 420.

A list of non-resident taxes will be defective, if the name of the original owner, when known, be not inserted therein.—*Ainsworth v. Dean*, 21 N. H. 400.

The list of non-resident taxes must be separately signed by the selectmen when committed to the collector for collection.—*Copp v. Whipple*, 41 N. H. 273.

If in the list of non-resident taxes, land is taxed in the name of an individual it is to be presumed, till the contrary appears, that the name thus inserted is that of the owner or original proprietor.—*Jaquith v. Putney*, 48 N. H. 138.

A tax sale of non-resident land cannot be sustained when the amount of taxes assessed thereon is not inserted in the collector's list and advertisement as required by law.—*Derry National Bank v. Griffin*, 68 N. H. 183.

Assessed When.—All taxes for any year following the first day of April shall be assessed upon the invoice taken in that month, estimating each poll at fifty cents, and taxable property at the rate of fifty cents on each hundred dollars of its appraised value. C. 59, S. 1.

An invoice, appraisal, and assessment of a tax were legally made by the selectmen in April.—*Hayes v. Hanson*, 12 N. H. 284.

Assessed Where.—Every person shall be taxed in the town in which he is an inhabitant or resident on the first day of April, for his poll and estate, except in cases otherwise provided by law. C. 56, S. 1.

An individual is to be taxed in the place of his domicile or home, and not where he is personally residing for a mere temporary purpose, having a home in some other place.—*Moore v. Wilkins*, 10 N. H. 452.

Real estate belonging to a savings bank is taxable to the bank in the town or place where the real estate is situated.—*Nashua Savings Bank v. Nashua*, 46 N. H. 389.

Assessed to Whom.—The selectmen shall assess all persons whom they believe to be inhabitants of the town on the first day of April. They may suspend the collection of the tax assessed against any person who tenders to them his affidavit stating that before the first of April he had removed from said town and became an inhabitant of another specified place and answer such interrogatories touching his residence, under oath, as they may propose. C. 56, S. 28.

They may abate the tax assessed against such person, if he shall on or before the first day of January following produce to them the certificate, under oath, of the selectmen of any other town that he was assessed in that town as an inhabitant and how much, and has paid the tax, and that the same is the legal tax for the year upon his poll and whole estate. *Ibid.*, S. 29.

If a highway surveyor, under color of his office, seize and sell property to satisfy a tax not legally voted, he is liable in damages to the extent of the value of the property so sold, although the party was liable to be taxed for the object for which the tax was assessed.—*Grafton Bank v. Kimball*, 20 N. H. 107.

State, County and School Taxes.—The selectmen shall seasonably assess all state and county taxes for which they have the warrants of the state and county treasurers respectively; all taxes duly voted in their towns; and all school, schoolhouse, and village-district taxes authorized by law or by vote of any school or village-district duly certified to them.

In assessing such taxes, the selectmen may assess a sum not exceeding five per cent more than the amount of such tax, to answer any

abatements that may be made, which shall be paid into the town treasury for the use of the town. But if the selectmen shall assess a sum exceeding that which they have a right to assess, such assessment shall be thereby rendered invalid only as to such excess. C. 59, SS. 2, 3.

An invoice, appraisal, and assessment of a tax were legally made by the selectmen in the month of April. In the month of May the assessors took the oath of office and signed the assessment thus made by the selectmen. *Held*, that as the assessment was made by a board competent to act, the concurrence therein of the assessors did not render it invalid.—*Hayes v. Hanson*, 12 N. H. 284.

Selectmen in the assessment of taxes and in issuing their warrants for the collection of them do not act as a court, and their decisions are not regarded as judgments either in this state or in Vermont. If they erroneously assess a tax and issue a warrant for its collection and thus interfere with the personal liberty of an individual or his property without authority, an action may be maintained against them by the party aggrieved.—*Henry v. Sargeant*, 13 N. H. 321.

The selectmen of towns may include in one assessment the state, county, town, highway, schoolhouse, school or village-district, and school taxes, or so many of them as may be found convenient. *Ibid.*, S. 4.

A highway tax will not be rendered invalid because the selectmen for convenience have divided the amount and placed it in two columns.—*Orford v. Benton*, 36 N. H. 395.

Selectmen are liable in an action of debt for neglect to pay over on demand to the prudential committee the proportion of school money belonging to the district, assessed and assigned for a previous year by a former board of selectmen.—*District v. Morrill*, 59 N. H. 367.

Record of Invoice and Taxes.—A fair record shall be made of every invoice taken by the selectmen, and of all taxes by them assessed, in a book of records of the doings of the selectmen in their office, which shall be the property of the town; and a copy thereof shall, prior to the first day of July, be left with the town clerk, or the original invoice and assessment shall be so left and recorded by him, and both records shall be open to the inspection of all persons. *Ibid.*, S. 5.

The book of the selectmen containing the invoice of the inhabitants of a town and the sums carried out against each individual's name is not conclusive as evidence of the assessment of such individual, but is subject to alteration and correction by the selectmen, until recorded in the town book, or left with the town clerk for that purpose.—*Wakefield v. Alton*, 3 N. H. 378.

One cannot go behind the record of the invoice to presume an error or informality in the amount or description of the property returned, but where it appears by the records of the selectmen that a tax was duly made from an invoice of an individual, as recorded in their books, the property will be regarded as *prima facie* duly invoiced, until the contrary is shown.—*Blake v. Sturtevant*, 12 N. H. 572.

The town clerk is bound to certify the date of the record of all papers left in his office to be recorded, as well upon the original as upon the record.

Amendments may be allowed in the records of towns by the superior courts, according to the truth.—*Pierce v. Richardson*, 37 N. H. 306.

Lapse of time raises no presumption of the assessment of taxes. If the records of the assessment are lost, other evidence may be introduced to supply the deficiency. Taxation is a matter of record.—*Pittsfield v. Barnstead*, 38 N. H. 115.

Taxation can only be proved by the records of the taxes, unless their loss be first shown.—*Farrar v. Fessenden*, 39 N. H. 268.

By the act of 1791, selectmen were required to make assessments of taxes and to record them in their book, which was to be the property of the town, and open to any of the inhabitants of the town. *Held*, that the selectmen's book furnishes competent *prima facie* evidence of the fact of the due assessment of resident taxes.—*Pittsfield v. Barnstead*, 40 N. H. 477.

After the record of the invoice of non-resident taxes required by the statutes the selectmen recorded in their book of records the warrant to the collector, and signed their names at the end of the warrant. *Held*, a good assessment. *Paul v. Linscott*, 56 N. H. 347.

Names of Collectors Returned.—The selectmen shall seasonably make a return to the state and county treasurer of the names of the collectors of their respective towns, the date of their warrants, the amounts they are required to pay to such treasurers respectively and the time of payment. C. 59, S. 6.

List and Warrant to Collector.—A list of all taxes by them assessed shall be made by the selectmen under their hands, and delivered to the collector on or before the thirtieth day of June, with a warrant under their hands and seal, directed to the collector of such town, requiring him to collect the same, and to pay to the state and county treasurer and to the town treasurer such sums at such times as may be therein prescribed. *Ibid.*, S. 7.

A warrant authorizing a collector to collect several taxes separately assessed may be considered as several warrants to collect the several taxes, respectively.—*Brackett v. Whidden*, 3 N. H. 17.

The signature of the warrant by two selectmen is sufficient.—*Smith v. Messer*, 17 N. H. 420.

Selectmen cannot assess any tax unless they are authorized by law or a vote of the town to do so.—*Osgood v. Blake*, 21 N. H. 559.

The list of taxes is to be under the hands of the selectmen, and the warrant is to be under the hands and seals of the same officers.—*Chase v. Sparhawk*, 22 N. H. 134.

The list may be made so far a part of the warrant that the signatures of the warrant may be held sufficient signatures of the list.—*Thompson v. Currier*, 24 N. H. 237.

Delivery of a tax-list to a person who has been appointed collector and has consented to serve will be held a sufficient delivery from the time his bond was accepted and his appointment recorded, though these were done the next day.—*Pierce v. Richardson*, 37 N. H. 306.

The list and warrant to collect the same should contain distinctly the names of the persons against whom the taxes are assessed.—*Clark v. Bragdon*, 37 N. H. 562.

A selectman who is appointed by his associates collector of taxes to fill a vacancy is not estopped to allege the invalidity of the warrant and list of taxes committed to him.—*Pittsburg v. Danforth*, 56 N. H. 272.

An omission to sign the list of taxes will be deemed an irregularity of the selectmen, so that the collector will not be held responsible on that account. List and warrant may be so combined as to be both warrant and list within the meaning of the statute.—*Bailey v. Ackerman*, 54 N. H. 527.

Wrong Person.—If the selectmen before the expiration of the year for which a tax has been assessed, shall discover that the same has been taxed to a person not by law liable, they may upon abatement of such tax and upon notice to the person liable therefor, impose the same upon

the person so liable. And also if it shall be found that any person or property shall have escaped taxation, the selectmen, upon notice to the person, shall impose a tax upon the person or property liable. *Ibid.*, S. 9.

The property of one of a firm may be taken to satisfy a tax-bill against the firm of which he was a member.—*Vandyke v. Carlton*, 61 N. H. 574.

An error in assessment will be corrected by the court. *Mandamus* issued to selectmen ordering them to correct an erroneous assessment.—*Boody v. Watson*, 64 N. H. 162.

Taxes, Abatement.—Selectmen, for good cause shown, may abate any tax assessed by them or by their predecessors. *Ibid.*, S. 10.

The selectmen shall abate a sum not exceeding three dollars from the tax of any inhabitant who shall construct, and during the year keep in repair a watering trough well supplied with water, easily accessible for horses attached to carriages, if they shall deem it necessary for the convenience of travelers. *Ibid.*, S. 12.

The selectmen may, upon application of any person who shall plant and protect shade trees by any highway adjoining his land, make such abatement of taxes to him as they shall deem just and equitable. *Ibid.*, S. 13.

No abatement of a tax shall be of any effect until recorded in the records of the selectmen. *Ibid.*, S. 14.

Certiorari granted on the ground that the common pleas had no authority to make an order of abatement in the case.—*State v. Thompson*, 2 N. H. 236.

Where the selectmen without right doom a person who is liable to taxation and he is compelled by a seizure of his property to pay the tax, he may have a remedy in case, or trespass at his election.—*Walker v. Cochran*, 8 N. H. 166.

Poverty and inability to pay taxes is a good cause for the selectmen to abate them.—*Brigg's Petition*, 29 N. H. 547.

Non-residents are entitled to the same remedies for the abatement of an illegal or unjust tax as residents, upon complying with the requirements of the statute.—*Dewey v. Stratford*, 40 N. H. 203.

One who had paid taxes on lands for five years in succession, claiming to own them, might maintain his petition for the abatement of last year's taxes, if properly brought in other respects, without proof of title.—*Dewey v. Stratford*, 42 N. H. 282.

An abatement of a tax must be the act of a majority of the selectmen, acting in their official capacity, and must be a matter of record.—*Hillsborough v. Londonderry*, 46 N. H. 11.

Taxes cannot be abated by vote of the town. The selectmen alone, or the court, is authorized to make such abatement.—*Hampstead v. Plaistow*, 49 N. H. 84.

On petition to abate taxes assessed by the selectmen there is no right to a trial by jury, but the court may in its discretion send an issue to a jury.—*Cocheco Mfg. Co. v. Strafford*, 51 N. H. 455.

When application is made to the selectmen for abatement of a tax, the applicant is not bound to show cause for such abatement until they afford him an opportunity to be heard. If the selectmen neglect unreasonably to afford such an opportunity, the applicant may apply by petition to the circuit court for such an abatement.—*Melvin v. Weare*, 56 N. H. 436.

Selectmen for good cause shown may abate any tax assessed by them or their predecessors.—*Edes v. Boardman*, 58 N. H. 580.

The town has no power to make abatement of taxes or to delay or suspend

their payment. Such power is lodged with the selectmen.—*Northumberland v. Cobleigh*, 59 N. H. 255.

When an assessment is made upon an overvaluation and also when it is illegal, the party aggrieved has a plain and adequate remedy at law by petition for abatement.—*Perley v. Dolloff*, 60 N. H. 504; *Locke v. Pittsfield*, 63 N. H. 122; *Edes v. Boardman*, 58 N. H. 580; *School District v. Selectmen*, *Ibid.* 277.

The remedy against a tax illegally assessed is by appeal from the assessment.—*Bradley v. Laconia*, 66 N. H. 269.

A non-resident payer of taxes on personal property may appeal from the selectmen's refusal to abate his tax at any time within nine months after he has received actual notice of the tax.—*Downing v. Farmington*, 68 N. H. 187.

Overvaluation of some classes of a tax-payer's estate does not entitle him to abatement, if the error is neutralized by undervaluation of other property.—*Amoskeag Mfg. Co. v. Manchester*, 70 N. H. 200.

The rented real estate of a corporation formed solely for benevolent and charitable purposes is not exempt from taxation as property used for the purposes of the association.—*Y. M. C. A. v. Keene*, 70 N. H. 223.

The personal estate of an intestate rightfully taxed in another state where it is situate is not taxable in the town in this state in which the administrator resides.—*Rand v. Pittsfield*, 70 N. H. 530.

Under chapter 108, Laws 1895, savings banks are not exempt from taxation for railroad bonds secured by mortgage of real estate situate within this state and of all other property rights and franchises of the corporation.—*State v. Savings Bank*, 71 N. H. 535.

Exemption by Vote of the Town.—Towns may by vote exempt from taxation for a term not exceeding ten years, any manufacturing establishment proposed to be erected, or put in operation therein, and the capital to be used in operating the same, unless such establishment has been previously exempted from taxation by some town. C. 55, S. 11.

Any town in this state may by vote authorize its proper officers to make contracts with individuals to exempt from taxation, for a term not exceeding ten years, all materials of wood, copper, iron, and steel, used in the construction and building of ships and vessels in such town, and the ships and vessels constructed therefrom while in the process of construction. *Ibid.*, S. 12.

Ships and vessels engaged in the foreign carrying trade for at least ten months of the year preceding the annual assessment of taxes, or built during the year for that trade, are not subject to taxation, but their net yearly income may be taxed. *Ibid.*, S. 13.

All moneys loaned to the town by individuals living in the town under authority of a vote of the town, at a rate of interest not exceeding five per cent., are not subject to taxation. *Ibid.*, S. 14.

A plant designed for generating and distributing electric light and power is not a "manufacturing establishment" within the meaning of section 11, chapter 55, of the Public Statutes, and cannot be exempted from taxation as such.—*Williams v. Park*, 72 N. H. 305.

Cemeteries, Public.—All public cemeteries and all property held in trust for the benefit of public places for the burial of the dead, and so much of the real estate and personal property of charitable associations, corporations and societies as is devoted exclusively to the

uses and purposes of public charity, are exempted from taxation. Acts of 1895, C. 66, S. 1.

Corporate Stock.—Stock of corporations shall not be taxed, if the nature and purposes of the corporation are such that no dividend of its profits is to be made. No statute provisions shall be so construed as to subject any stock to double taxation. *Ibid.*, SS. 9, 10.

Swamp Lands, Exempt.—The improvement caused by reclaiming swamp or swale lands for purposes of agriculture shall be exempt from taxation for a term of ten years from the time when such improvement shall have been made to the satisfaction of the selectmen of the town in which such lands are situated.

Tires.—The selectmen of a town may, when in their opinion it is for the public good, abate a portion of the tax assessed against owners of freight, express, and farm wagons, carts, coaches, or carriages constructed before January 1, 1900, which are owned and in use in their town, for purposes of transportation, having tires less than three inches in width, *provided* the owner or possessor thereof will change the wheels on such vehicles to wheels of greater width of rims or felloes, and *provided further* that such abatement shall not exceed five dollars in any one year for each vehicle, the wheels of which are changed (not more than fifteen dollars for any one vehicle). Acts of 1903, C. 58.

Poll; Soldiers' and Sailors' Exemption.—Any soldier or sailor of the War of the Rebellion who shall present to the selectmen or assessors of the town in which he lives, for inspection and record, his pension certificate awarding to such soldier or sailor an invalid pension, or an honorable discharge from the service of the United States, shall thereafter be exempt from levy of poll tax. C. 56, S. 2.

The selectmen shall record the number of said certificate, the name of the invalid, the command in which he served, and the rate of pension, in a book to be kept for that purpose. *Ibid.*, S. 3.

They may in their discretion exempt any other soldier or sailor who served in the late Rebellion, or in the Spanish-American War and is disabled in consequence of such service, from paying a poll-tax. *Ibid.*, S. 4; Acts of 1903, C. 68.

Tree Planting, Rebates.—A rebate of ninety per cent for the first ten years, of eighty per cent for the second period of ten years and fifty per cent for the third and final period, is allowed upon the taxes assessed upon all lands planted with timber or forest trees, not less than 1,200 to the acre, on condition that the planted trees are kept in sound condition. A return is required to be made to the selectmen, and when verified by them is made the basis of the exemption from taxes. After the first ten years the owners may thin out the trees, leaving not less than six hundred trees to the acre, but no portion of the

land shall be absolutely cleared of trees during the period of allowance of the rebate. Acts of 1903, C. 124, S. 1.

School Taxes; Rate.— The selectmen in each town shall assess, annually, upon the polls and ratable estate taxable therein a sum to be computed at the rate of seven hundred and fifty dollars for every dollar of the public taxes apportioned to such town, and so for a greater or less sum. C. 88, S. 1.

The town may raise a sum exceeding the said amount, which shall be assessed in the same manner. *Ibid.*, S. 2.

It is not necessary that towns in their votes to raise money for annual expenditures should in all cases raise a specific sum for each specific object.—*Tucker v. Aiken*, 7 N. H. 113.

Selectmen are not liable for assessing a tax in pursuance of an unconstitutional act of the legislature, or an illegal vote of the town.—*Edes v. Boardman*, 58 N. H. 580; *Locke v. Pittsfield*, 63 N. H. 122.

It is not the duty nor right of the selectmen to inquire into the legality of the vote of a school district to raise money; but when such vote is certified to them by the district clerk, they should assess the tax, and *mandamus* lies to enforce performance of that duty.—*School District v. Carr*, 63 N. H. 201.

Towns are not liable for the board of wages or teachers in the district schools, and are not made liable by a vote of the town to raise money for the purpose of paying them, the vote being illegal.—*Wheeler v. Alton*, 68 N. H. 477.

Assessment and Collection.— In the assessment of school-district taxes, every person shall be taxed in the district in which he lives for his poll and his personal estate subject to taxation in town. Real estate shall be taxed in the district in which it is situated. C. 89, S. 6.

The selectmen may make a new invoice of all the property in the district when necessary for the just assessment of such taxes.

If such taxes are assessed after the first day of July in any year upon the property of non-residents, the collector shall send to the owners of said property, or to their agents, if known, a bill of their taxes within two months after the delivery of the list to him, and shall, at the expiration of four months after such delivery, advertise and sell the property on which the taxes have not been paid in the same manner as if such taxes had been assessed in April preceding. *Ibid.*, SS. 7, 8.

That the selectmen of towns, which have not fully complied with chapter 43 of the Laws of 1885, providing for the establishment of the town system of schools, are hereby empowered to appraise the school property in their respective towns and apportion the taxes thereon, in compliance with said chapter. Acts of 1895, C. 20, S. 1.

The limitation to a maximum amount, of the sum to be raised in the school district, imports sufficient certainty, and the expenses to be incurred within the limit prescribed, is a matter properly intrusted to the prudential committee.—*Brown v. Hoadley*, 12 Vt. 472.

How Assigned.— The selectmen shall assign to each district a portion of such money according to the valuation of the district for the year, or in such other manner as the town at the annual meeting

shall direct, and shall pay over the same to the school board of the district. C. 88, S. 4.

The power of selectmen to apportion school money among the several school districts is a continuing power, to be exercised from time to time, whenever necessary from changes in districts, in order to give to each district the benefit of the tax paid by its members.—*School District v. Sanborn*, 25 N. H. 34.

A school district is entitled to its proportion of school money except the literary fund, although no school is kept.—*School District v. Merrill*, 59 N. H. 367.

A school district situate in two or more towns is entitled to its just proportion of money raised for school purposes by vote of the several towns beyond the amount by law to be assessed, according to the valuation of persons and property taxable therein; and a vote of one of the towns making a different disposition of such money is inoperative.—*School District v. Twitchell*, 63 N. H. 11.

The statute declared to be constitutional.—*School District v. Prentiss*, 66 N. H. 145.

Ward's Tax Assigned.—When a guardian and ward reside in the same town, the selectmen shall assign the tax assessed upon the ward's personal property to the school district in which the ward lives and has his home. C. 88, S. 5.

Neglect to Assess, Penalty.—If the selectmen of any town neglect to assess, assign, or pay over the school money as aforesaid, they shall pay for each neglect a sum equal to that so neglected to be assessed, assigned, or paid over. C. 88, S. 6.

Selectmen are liable in an action of debt for neglect to pay over on demand to the prudential committee the proportion of school money belonging to the district, assessed and assigned for a previous year by a former board of selectmen.—*School Dist. v. Morrill*, 59 N. H. 367; *School Dist. v. Perkins*, 49 N. H. 538.

Schoolhouses Assessed.—The selectmen, upon application of the creditor and receipt of copies of the vote and note of the district, may, in each annual tax assess upon the district one-fifth of the debt incurred from building schoolhouses and the interest, and shall cause the same to be collected and paid to the town treasurer, and shall give an order upon the treasurer to the creditor for the amounts collected. C. 89, S. 5.

New Invoice.—The selectmen may make a new invoice of all the property in the district when necessary for the just assessment of such taxes. *Ibid.*, S. 7.

On the unreasonable neglect or refusal of a school district to raise money to build or repair schoolhouses, the jurisdiction devolves on the selectmen of the town who are bound to assess a sufficient tax on the district for the purpose.—*Blake v. Sturtevant*, 12 N. H. 567.

Dissolved Districts.—If a district dissolved is formed of parts of two or more towns, an equitable apportionment of its assets and liabilities between such parts shall be made by the selectmen of the towns in which they are situate acting as a joint board, within sixty days after the dissolution. *Ibid.*, S. 17.

If such joint board fail to make an apportionment within the time limited therefor, any taxpayer within the district may apply by petition to a judge of the supreme court for the appointment of a referee to make the apportionment. *Ibid.*, S 18.

Upon receiving a copy of the apportionment, the selectmen shall assess upon that part of the district within their town the amount for which it is charged, and cause the same to be collected and paid to the town district in which the creditor part of the dissolved district is situated. *Ibid.*, S. 22.

A balance of a fund of an abolished school district remaining after the assessment and remission of the equalizing tax authorized by the Laws of 1885, chapter 43, article 2, is applied by law, as nearly as may be, to the use of those who would have been entitled to the benefit of it, if the district had not been abolished; and the school board of the town district may be appointed trustees for the disposition of the money.—*School Dist. v. Concord*, 64 N. H. 235.

The power of selectmen to apportion school money among several school districts in a town is a continuing power, to be exercised from time to time.—*School Dist. v. Sanborn*, 25 N. H. 34.

Where the taxes assessed exceed by not more than five per cent the amount of the taxes authorized by the warrants of the state and county treasurer, the school law and the votes of the town, it will be presumed, in the absence of evidence to the contrary, that the excess was added by the selectmen under authority given them by the statutes.—*Fletcher v. Drew*, 48 N. H. 180.

The assessment by the selectmen of a sum exceeding the amount of taxes legally authorized renders the assessment invalid as to the excess only.—*Taft v. Barrett*, 58 N. H. 448; *French v. Spalding*, 61 N. H. 395.

Inventory Returned to Secretary of State.—The selectmen shall on or before the first day of May in each year transmit to the secretary of state upon blanks furnished by him for that purpose, a certificate showing the number and total valuation of polls, and of each class of property included in the inventory of polls and ratable estates of their respective towns, taken in April, the amount of taxes levied and the rate per cent of taxation for all purposes that year. They shall also, on or before the first day of September in the year 1894, and every fourth year thereafter, transmit to the county commissioners of the county a copy of the entire inventory of their respective towns taken in April of such year. C. 43, S. 13.

Collector Appointed.—If a collector of taxes dies, removes from town, or is removed from office before completing the collection of the taxes committed to him, the selectmen may appoint some suitable person to collect the remainder of such taxes and issue a warrant to him for that purpose. *Ibid.*, S. 30.

Extent Against a Collector.—If any collector to whom any tax payable to the state or county treasurer is committed neglects to pay the same within the time limited in his warrant, and the selectmen of the town shall judge that there is danger that the collector will abscond or

be unable to pay the same, they may issue an extent against him for the taxes in arrears. C. 66, S. 5.

Selectmen have no authority to issue extents against delinquent collectors for any other than state and county taxes.—*Kimball v. Russell*, 56 N. H. 493; *Northumberland v. Cobleigh*, *Ibid.*, 255.

Extent Against Selectmen.—Selectmen who neglect to assess any tax for which they have the warrant of the state or county treasurer at the time and in the manner legally prescribed therein, or who neglect to return to either of such treasurers or to the town treasurer the name of the collector to whom they may commit any tax assessed by them, and payable to such treasurers, respectively, shall be liable to an extent. *Ibid.*, S. 3.

Extents; Proceedings.—Extents shall be directed to the sheriff of the county where they are to be executed, or his deputy, and shall be made returnable to the officer issuing the same, at a certain day named therein, which shall not be less than sixty days from the date thereof.

If any extent shall be returned unsatisfied, further or *alias* extents may be issued for any sum which may remain due upon such return.

Every extent may include the legal fees and charges incurred upon any former extent issued for the collection of the same tax.

Every person upon whose property an extent against any town has been levied shall have contribution from the other inhabitants or owners of property therein for the sums so levied, and for damages, and shall recover double costs.

Towns shall have their remedy by action against any selectman or collector through whose default any extent may have issued for all sums levied thereon, and for damages and double costs.

Selectmen shall have their remedy by action against any collector through whose default any extent may have issued against them for all sums levied thereon, and for damages and double costs.

Selectmen issuing any extent against a collector shall indemnify him against all costs and expenses arising to him by reason of any extent issued against him by the state or county treasurer for the same tax.

Selectmen shall have no remedy against any town for any sum levied upon any extent issued against them on their own default, except the amount of tax without any costs of levying or costs of suit. *Ibid.*, SS. 10-17.

Mandamus will not lie against a collector to compel him to collect a tax as the law provides for an action against him. School districts cannot bring legal proceedings against a delinquent collector. That power resides in the higher officers of the town.—*District v. Perkins*, 49 N. H. 538.

Suits for Collection.—The selectmen of any town may cause any tax to be collected by suit at law or bill in equity. C. 60, S. 17.

Telegraph and Other Companies, Licenses.—Telegraph, telephone, electric light and electric power poles and structures may be erected and

maintained in any public highway, and the necessary wires may be strung on such poles or placed beneath the surface of such highway by any person or corporation as provided in this chapter, and not otherwise. C. 81, S. 1.

Such person or corporation shall petition the selectmen of the town through which the line will pass to locate the route thereof and grant a license therefor. The selectmen may grant a license for such time as they deem expedient, may from time to time change the terms and conditions thereof, and may revoke it whenever the public good requires. They shall fix and state therein the size and location of such poles and structures, the distances between them, the number of wires to be used, and their distance above or below the surface of the highway. They may delegate all or any part of the powers conferred upon them by the provisions of this section to such agents as they may duly appoint. *Ibid.*, S. 2.

The proprietors of such lines, or any person whose rights or interests are affected by a license, may petition the selectmen for such changes in the terms thereof as they may desire, and, after notice to the parties and hearing, the selectmen may make such alterations therein as justice may require. *Ibid.*, S. 3.

Injuries to Trees.—No person or corporation shall have a right to cut, mutilate, or injure any shade or ornamental tree for the purpose of erecting or maintaining their line without consent of the owner of the land on which it grows; or, if his consent cannot be obtained, unless the selectmen, upon petition, after notice to and hearing the parties, decide that the cutting or mutilation is necessary, and assess the damages that will be occasioned to the owner thereby, nor until the damages are paid or tendered. *Ibid.*, S. 5.

Damages by.—If any person shall be damaged in his estate by the erection of any poles or other structures, or by the stringing of any wires for which license is granted, he may apply to the selectmen to assess his damages; such proceedings shall thereupon be had, including the right of appeal, as are provided in the case of assessment of damages in laying out highways by the selectmen, and in all cases arising under the provisions of this chapter such damages, if any, may be awarded as shall be legally and justly due.

Similar proceedings may be had for locating and licensing lines of wire already constructed and for changing their location and license. *Ibid.*, SS. 6, 7.

Returns; Fees.—The selectmen shall, within thirty days, make a return of their proceedings and decision upon every petition presented to them, and of every license by them granted under the provisions of this chapter, and shall cause the same to be recorded by the town clerk. If

the proprietors of the line are the petitioners, they shall pay the selectmen and town clerk for their services and fees. If a landowner is petitioner, he shall advance the pay for such services and fees, and may recover the same of the proprietors of the line against whom he makes petition, if his petition is sustained. *Ibid.*, S. 8.

A statute authorizing an electric light and power company "to take and hold and to purchase and hold such lands and interest in lands as may be reasonably necessary," and providing for the ascertainment and payment of the damages occasioned thereby, confers upon the corporation the power to take land for a public use without the consent of the owner, through an exercise of the right of eminent domain.—*Light and Power Co. v. Hobbs*, 72 N. H. 531.

Stations.—The selectmen of any town through which a telegraph or telephone line passes may petition the supreme court for the location of an office at a particular place therein for the receipt and transmission of messages. *Ibid.*, S. 12.

Town Clerk, Deputy Appointed.—The selectmen of towns may appoint a deputy town clerk, who shall qualify in the same manner as town clerks now qualify, and shall perform all the duties of the town clerk in case of absence by sickness, resignation, or otherwise of the clerk of the town. Acts 1899, C. 90, S. 1.

Town Lines, Perambulation.—The northerly and southerly lines of towns adjoining Connecticut river are continued and extended across the river to the westerly line of the state, and the west line of the state is the western boundary of such towns.

The lines between the towns in this state shall be perambulated, and the marks and bounds renewed, once in every seven years forever, by the selectmen of the towns, or by such persons as they shall in writing appoint for that purpose.

A return of the perambulation shall be made, particularly describing the courses and distances and the marks and monuments of such line, which shall be signed by the selectmen or persons making the same, and recorded in the respective town books.

The selectmen of the town first incorporated, or, if both were incorporated on the same day, of the town which is highest in the proportion of public taxes, shall give, to the selectmen of the town adjoining, notice of the time and place of meeting for such perambulation ten days before the day of meeting. C. 52, SS. 1-4.

Selectmen have authority to agree where an existing line is; and such an agreement will be conclusive on the subject.—*Gorrell v. Whittier*, 3 N. H. 265.

Where a grant is made extending to a river and bounding upon it, the center of the stream is the line of boundary if there is no limitation in the terms of the grant itself. But where a grant runs to and is bounded on a lake or other large body of standing fresh water the grant extends only to the water's edge.—*State v. Gilmanton*, 9 N. H. 461.

In general, if in a body of water there be a steady and uniform current, it will be a river.—*State v. Gilmanton*, 14 N. H. 467.

The perambulation of town lines is not evidence as to which of two lines was the one intended by an act of the legislature fixing the common boundary of two towns; especially if it does not appear that a question has arisen as to which was the true one, and has been judicially decided by the selectmen in their perambulations.—*Bailey v. Rolfe*, 16 N. H. 247.

The court of common pleas has authority "to settle and establish the disputed line," between two towns, if the selectmen do not agree in perambulating, and their jurisdiction is not limited to cases in which lines have been previously run and marked.—*Chatham's Petition*, 18 N. H. 227.

The opposing town only is entitled to notice.

Canterbury was incorporated in 1727 and Boscawen in 1760, but a gore was added to Canterbury in 1765, hence Boscawen was considered as the first incorporated, and rightly took the initiative for perambulation.—*Boscawen v. Canterbury*, 23 N. H. 188.

In proceedings under the statute, as a general rule, the costs will be equally divided between the towns; but if it appear that the objections to perambulation made by the selectmen of one town were frivolous and unfounded, the court will order such town to pay all costs.—*Campton v. Holderness*, 25 N. H. 225.

Where a line between two towns was established by the original proprietors of one, and that line was treated for fifty years as the correct one between the towns, *held*, that it must be regarded as the true jurisdictional line between the towns.—*Hanson v. Russell*, 28 N. H. 111.

The judgment of the court of common pleas establishing a boundary is conclusive upon plaintiff, is final and binding upon all the world.—*Pitman v. Albany*, 34 N. H. 577.

The selectmen have no judicial powers as to town lines; they cannot determine judicially any disputed question in regard to the lines. Their whole function is ministerially to renew the marks and boundaries which they find upon the land. If they cannot find the same marks and boundaries, the court has now power to decide the question.—*Greenville v. Mason*, 57 N. H. 396.

Town Meetings; Warnings.—A town meeting may be warned by the selectmen when in their opinion there shall be occasion therefor. C. 41, S. 1.

In case of the death or removal of any selectman of a town, the major part of those who remain in office shall have power to warn town meetings. *Ibid.*, S. 8.

The warrant for any town meeting shall be under the hands of the selectmen, and shall prescribe the place, day and hour of the meeting. The subject-matter of all business to be there acted upon shall be distinctly stated in the warrant, and nothing done at any meeting, except the election of any town officer required by law to be made at such meeting shall be valid unless the subject thereof is so stated. *Ibid.*, S. 2.

The selectmen, upon the written application of ten or more voters, or one-sixth of the voters in town, shall insert in their warrant for the biennial, annual or any other meeting, any subject specified in such application, or shall warn a meeting therefor, if requested in such application. *Ibid.*, S. 3.

The selectmen may address their warrant to the inhabitants of the town qualified to vote in town affairs, in which case they shall post an attested copy of such warrant at the place of meeting, and a like copy

at one other public place in the town, fourteen days before the day of meeting. *Ibid.*, S. 4.

Warrants for town meetings may be directed to a constable of the town, requiring him to notify the inhabitants; and such constable shall post an attested copy of such warrant, as provided in the preceding section. *Ibid.*, S. 5.

A shoemaker's shop is not a "public place" within the meaning of the statute.—*Tidd v. Smith*, 3 N. H. 178.

Where notice of holding a town meeting was given by posting up the warrant itself instead of a copy, the meeting was held to be legal.—*Brewster v. Hyde*, 7 N. H. 206; *Norris v. Eaton*, *Ibid.* 284.

An article in the warrant for a town meeting: "To see what sum of money the town will vote to raise for support of schools, of the poor, repairing bridges and highways, for the payment of the just debts of the town and for other legal purposes," states with sufficient precision the subject-matter to be acted on under it.—*Tucker v. Aiken*, 7 N. H. 113.

When no return has been made upon a warrant calling a town meeting, the court on satisfactory evidence will permit the selectmen who ought to have made a return to supply the omission, and the town clerk for the time to amend the record accordingly.—*Bean v. Thompson*, 19 N. H. 299.

An article in a warrant "to choose all necessary town officers," is sufficient to authorize the choice of an agent to build a road.—*Baker v. Shephard*, 24 N. H. 208.

The words "public place" construed to mean such places as in comparison with others in the same town are those where the inhabitants and others most frequently resort.—*Russell v. Dyer*, 40 N. H. 173.

The vote of a town held to be void, there being no article in the warrant authorizing it.—*Rollins v. Chester*, 46 N. H. 411.

After the lapse of thirty years, a jury may presume that a warrant for a town meeting, shown to have been properly posted, remained posted for the time required by law.—*Schoff v. Gould*, 52 N. H. 512.

A town failed to adopt an act to enable it to reform its school system, the article in the warrant for the meeting not properly setting forth such purpose, but a different one.—*Child v. Colburn*, 54 N. H. 71.

Under an article in the warrant as to a gratuity to a railroad, the town could lawfully vote such a gratuity.—*Sawyer v. Manchester & Keene R. R.*, 62 N. H. 135.

Town Meetings, Warrant How Returned.—The selectmen or the constable serving any warrant shall return the same, at the time and place of meeting, with a certificate of the service thereof, to the town clerk, or, in his absence, to one of the supervisors. C. 41, S. 7.

The return on a warrant posted up by the selectmen must state the time when, and the place where, it was posted. Such return is the only evidence to prove the warrant to have been duly posted up.—*Proprietors of Cardigan v. Page*, 6 N. H. 182.

A return by the selectmen that the warrant for a town meeting "has been duly posted up for more than fifteen days," held not sufficient.—*Nelson v. Pierce*, *Ibid.* 194.

Neglect to Warn, Penalty.—If selectmen neglect to issue a warrant for the holding of any meeting for the choice of state, county, or town officers, electors of president and vice-president of the United States, and representatives in Congress, or neglect to cause copies of such warrant, if not directed to a constable, to be duly posted or notice of such meeting to be given, agreeably to any vote of the town, they shall

for each offense be fined fifty dollars, for the use of the town. C. 41, S. 12.

Town Notes, Signed.—Town notes shall be signed by a majority of the selectmen and countersigned by the treasurer. C. 43, S. 22.

Town Treasurer Appointed.—If any town at the annual meeting fails to elect a treasurer, the selectmen are required to appoint one within six days thereafter, to hold office during their pleasure or until another is chosen or appointed and qualified in his stead; and they shall fix his compensation and make a written contract with him in relation to it. *Ibid.*, S. 18.

Trust Funds, Hold and Manage.—Unless the instrument creating the trust otherwise provides, or the town shall otherwise direct, they shall manage all trust funds held by the town, and shall invest the same in some savings bank in this state, in the public funds of the United States or of any of the New England states, in the bonds or notes of any city, county, or town whose indebtedness does not exceed five per cent. of the last preceding valuation of property therein for the assessment of taxes, or in notes of any citizen of the state fully secured by a pledge of any of the aforesaid securities at no more than the par value thereof, and in no other way. *Ibid.*, S. 8.

Unincorporated Places, Powers in.—Unincorporated places, which shall be required to pay any public tax, are invested with the powers of towns relating to the choice of moderator and clerk, supervisors, selectmen, assessors, constables and collectors; and all the provisions of law applicable to towns and town officers are extended to such places and their officers so far as they relate to meetings for the choice of such officers and to their election, powers, duties and liabilities, and so far as they relate to public highways, the assessment and collection of public taxes, and the perambulation of the lines of such places. C. 54, S. 1.

An unincorporated place cannot by its own act place itself in such a position as to entitle it to rights and privileges or subject itself to the liabilities of a town.—*New Boston v. Dunbarton*, 12 N. H. 409; *Hillsboro v. Deering*, 4 N. H. 92.

Evidence that a place for fifty years exercised all the privileges of a town is proper to be submitted to the jury from which to infer that the place has been incorporated, although no charter has been found.—*New Boston v. Dunbarton*, 15 N. H. 201.

Where no charter or act of incorporation of a place can be found, its incorporation as a town may be proved by reputation, or long user of corporate powers as a town without objection, or by legislative grants.—*Bow v. Allenstown*, 34 N. H. 351.

Chapter 41, Statutes 1895, does not apply to an unincorporated place which has organized and elected officers and raised money by taxation for highways and other town purposes.—*Coe v. Carter*, 59 N. H. 483.

Vaccination Agent Appointed.—The selectmen of a town, whenever in their opinion the health of the inhabitants of the town by reason of the spreading of smallpox shall require it, may appoint an agent for

vaccination, who shall be provided at all times with suitable matter for communicating the kinexox. He may vaccinate all persons at the expense of the town who have not had the smallpox or the kinexox, and shall receive a suitable compensation therefor to be paid by the town. C. 110, S. 1.

Every physician who attends upon any person infected with the smallpox or other malignant, pestilential disease shall immediately report the same to the health officers or selectmen of the town. *Ibid.*, S. 3.

Services performed in vaccinating a family at the request of the selectmen are chargeable against the town.— *Wilkinson v. Albany*, 28 N. H. 9.

Village Districts, Established.— On petition of ten or more legal voters of any village in the town, the selectmen shall fix by suitable boundaries a district including the village and such adjacent parts of the town as may seem to them convenient for any of the purposes named in the statute. They shall cause a record of the petition and their doings thereon to be recorded in the records of the towns in which the district is situate, and shall call forthwith a meeting of the legal voters residing in the district, to see if they will vote to establish the same, and if so, to choose necessary officers therefor. They shall call the meeting and give notice thereof as town meetings are called and warned, excepting that the warrant shall be posted at two or more public places in the district. C. 53, SS. 1, 2.

Boundaries Changed.— The selectmen of towns in which a village district has been established, upon petition, after notice to parties interested and a hearing, may change the boundaries thereof. *Ibid.*, S. 4.

Weighers, Public, Appointed; Duties.— Towns which adopt the provisions of this act may erect and maintain public scales and appoint public weighers. The weighers shall be appointed by the board of selectmen, and hold office during the term of office of such board, subject, however, to removal at any time by the board appointing them.

All coal and hay sold by weight shall be weighed by one of such public weighers at the expense of the seller. The weigher shall deliver to the seller or his agent a certificate of the weight of all merchandise weighed by him, and shall keep a record of all such certificates, to be open at all times to inspection by any person interested therein. Acts 1901, C. 33.

Weights and Measures Provided.— The selectmen of each town shall provide the town sealer with a full set of scale-beams, weights and measures. If they shall neglect to provide any scale-beam, weight or measure necessary to make such full set, after notice of the deficiency and a reasonable time to procure the same, they shall forfeit for each offense ten dollars. C. 125, S. 5.

Statute construed. A duty imposed on the selectmen must be performed by them or the penalty be incurred.— *Pike v. Jenkins*, 12 N. H. 255.

SPIRITUOUS LIQUOR.

The statutory definition of the words "spirit", "spirituous liquor", or "intoxicating liquor," is "all spirituous or intoxicating," and all mixed liquor any part of which is spirituous or intoxicating." C. 2, S. 33.

Agents.—State agents for the sale of intoxicating liquor are appointed by the governor, and when qualified become the authorized agents of the state to furnish spirituous and malt liquors to agents appointed by towns and cities, under such regulations and restrictions and on such terms as to them may seem proper.

The selectmen of towns may appoint not exceeding three liquor agents on or before April 1st of each year, *provided* the town votes to have such agents, to sell pure, spirituous and malt liquors for medicinal, mechanical, scientific and sacramental purposes, who hold office for one year, but may be removed at the pleasure of the selectmen for cause, and shall be removed by them for any violation of chapter 112, of the Public Statutes or amendments thereto.

The town agents are governed in making sale of such liquors by rules laid down in the statutes, a copy of which is furnished them by the selectmen and another conspicuously posted at the agency. They are required to make a report annually under oath to the selectmen of all their transactions, and of the quantity, kind and cost of all liquors remaining on hand at the date of such report, and to turn over all money in their hands at that date to the town treasurer.

Severe punishments are imposed for the illegal sale of spirituous liquor, and for any violations of the law, or fraudulent conduct, on the part of the agents. Acts of 1899, C. 71, SS. 1-13; C. 112, SS. 15-36.

It is the offer to sell and not the sale unaccompanied by an offer, which is prohibited by the statute.—*Brckett v. Hoyt*, 29 N. H. 264.

The selectmen of a town are liable to indictment and fine for neglecting to appoint an agent for the sale of spirituous liquors for use in the arts and in medicine, under the statute of 1855 for the suppression of intemperance.—*State v. Woodbury*, 35 N. H. 230.

Under the provisions of the act of July 14, 1855, the selectmen of any town, or the liquor agent, or agents, by them appointed, might purchase upon the credit of the town the liquor necessary to supply its agency or agencies, and the selectmen might bind the town by a note given for the price of such liquors.—*Great Falls Bank v. Farmington*, 41 N. H. 32.

The office of liquor agent is an annual office and the official bond covers the official year only, although the agent may continue in office longer.—*Dover v. Twombly*, 42 N. H. 59.

The power of selectmen to make rules to govern agents appointed by them extends to the purchase as well as the sale of spirituous liquors, and under that power they may prohibit the use of the town's credit altogether.—*Backman v. Charlestown*, 42 N. H. 125.

The fact that a town agent is made liable to a penalty for purchasing liquors of any other person than a state liquor agent, after notice of the appointment of such state agent, does not make a sale of liquors to the town agent by a person not a state agent, criminal, illegal, or void.—*Butler v. Northumberland*, 50 N. H. 33.

Selectmen cannot lawfully act as agents for the purchase of spirituous liquors, or appoint one of their number to be such agent, and cannot bind the town for the price of spirituous liquors so purchased.—*Richards v. Columbia*, 55 N. H. 96.

After the governor appoints an agent to furnish liquors to town agents and duly notifies them, towns are not liable for liquors purchased by such agents of others.—*Lauten v. Allenstown*, 58 N. H. 289.

A person selling liquor to a town agent is charged with notice of any limitation of the agent's authority shown by the record required by law to be made, of the rules and regulations prescribed for the observance of such agent.—*Sprague v. Cornish*, 59 N. H. 161.

SUPERINTENDENT OF SCHOOLS.

See "Schools."

SUPERVISORS OF THE CHECK-LIST.

Election; Term; Vacancies.—A board of supervisors of the check-list, consisting of three legal voters in each town, is chosen at each biennial election; but no person shall be supervisor and selectman at the time. They are sworn and hold office for two years.

Vacancies in the board may be filled by the remaining members; if not filled by them seasonably or if the whole board becomes vacant, the selectmen may make the appointments. In cases of appointment by the selectmen, the appointees hold office for the unexpired term. C. 32, SS. 1-4.

Duties.—It is the duty of the supervisors to make and post at two or more of the most public places in the town a complete alphabetical list of all the legal voters in the town, fourteen days before the day of any election at which such list is to be used. *Ibid.*, S. 5.

The supervisors prepare and post the check-lists for use at the annual town meetings in March in the same manner as they were required to do when moderators were chosen at such annual town meetings; and all provisions of the Public Statutes applicable to the preparation and posting of check-lists for biennial elections apply to annual town meetings. Acts of 1893, C. 80, S. 1.

Disability Removed.—No person shall be deprived of his right to vote by reason of having been excused from paying taxes in any town at his own request, if he shall, before he offers to vote, tender payment of all taxes assessed against him during the year prior to his offer to vote, to the moderator, to the collector of taxes, or to one of the selectmen, and, at the time he offers to vote, presents evidence of such tender. C. 31, S. 4.

Hearing on Check-list.—The supervisors are required to be in session for the correction of the check-list two days at least before the day of election, one of which shall be the day next preceding that of the elec-

tion and upon which all hearings shall be closed. Notice of the day, hour and place shall be given upon the posted check-list. C. 32, S. 6.

The supervisors shall hear all applications for correction of the check-list and the evidence submitted thereon, and shall correct it according to their best knowledge, so that it shall contain the names of those persons only who are legal voters in the town. The qualifications of an applicant shall be determined by the supervisors, and unless he is prevented by physical disability, or unless he had the right to vote or was sixty years of age or upwards, on January 1, 1904, they shall require him to write and read in such manner as to show that he is not being assisted in so doing and is not reciting from memory.

These educational tests are made by means of printed paste-board slips provided by the secretary of state, each containing five lines of the constitution of the state, which slips are placed in a box so constructed as to conceal them from view. Each applicant is required to draw one of said slips from the box and read aloud the words printed thereon, and to write one line printed on the slip and sign his name thereto in full view and hearing of the supervisors. No person who fails to read the constitution as printed on the slip thus drawn, and to write as aforesaid shall be registered as a voter. *Ibid.*, S. 7.

List Sworn to, Filed.—On the day of election, before opening the meeting, the supervisors are required to subscribe and make oath to a certificate on the back of the check-list as corrected by them, to the effect that according to their best knowledge the list contains the names of those persons only who are by actual residence legal voters in the town. They also file a true copy of the list, attested by them, with the town clerk. The check-list as corrected is open for the examination of every citizen at all times before the opening of the meeting. *Ibid.*, SS. 9, 10.

The supervisors are required to be present at the opening of each town meeting at which a check-list is to be used, and have with them the corrected check-list for that meeting, and shall remain in attendance upon the meeting until its close. *Ibid.*, S. 13.

The check-list used at any town meeting is preserved in the custody of the town clerk. *Ibid.*, S. 14.

If no supervisors of the check-list are chosen at a biennial election, they may be elected at a town meeting specially called for the purpose.—*State v. Bean*, 63 N. H. 249.

Selectmen may lawfully appoint supervisors in case of a failure to elect by the town. No vacancies thereupon occur, because the old board continue in office until others are chosen and sworn in their stead.—*State v. Hadley*, 64 N. H. 473.

SURVEYORS OF HIGHWAYS.

Election.—Any town may at the annual meeting choose by major vote one or more surveyors of highways. C. 43, S. 25.

Appointment; Districts.—Each town shall be divided by the selectmen into such highway districts as may by vote of the town be deemed expedient, and the selectmen shall appoint a surveyor of highways in each district into which said town shall be divided.

The selectmen, on or before the tenth day of May in each year, shall limit the several surveyors' districts, and give to each surveyor a list of persons in his district. Acts of 1899, C. 29, SS. 1, 4.

A surveyor's warrant for collecting highway taxes need not be under seal.—*Thompson v. Fellows*, 21 N. H. 425.

In choosing highway surveyors the vote of the town need not assign a particular district to each surveyor. That is left to the selectmen.—*Palmer v. Carroll*, 24 N. H. 314.

Highway surveyors have no authority to arrest the body to enforce collection of a highway tax.—*Marshall v. Wadsworth*, 64 N. H. 386.

A town is not liable to a traveler on the highway who falls into a trench dug across a sidewalk by a landowner, in the absence of the statutory notice of the defect.—*Wilder v. Concord*, 72 N. H. 259.

Bond; Tools; Taxes Insufficient.—Whenever the money to be expended in any highway district shall amount to one hundred dollars or more, the surveyor of highways in such district shall give bond with sufficient sureties, to the acceptance of the selectmen, for the faithful performance of the duties of the office; and his failure to do so for ten days after receiving notice of his election or appointment shall be deemed a declination of office.

The town may determine the prices to be allowed for labor, materials, and for use of tools. If not so determined, they shall be fixed by the selectmen, and notice thereof shall be given to the surveyors.

When the whole tax in a surveyor's list, in the opinion of the selectmen, is not needed in his district, they may order a part thereof to be expended in another district.

When the taxes in any surveyor's list, from unforeseen accident, are insufficient for his district, the selectmen may order any other surveyor to cause the taxes, or any part thereof in his list, to be expended in that district.

If the highway taxes in any town are insufficient for the suitable repair of highways and bridges therein, the selectmen may cause them to be put in repair at the expense of the town. Acts of 1899, C. 29.

Selectmen have no authority to repair highways at the expense of the town until the money raised by vote of the town for that purpose has been expended.—*Wells v. Goffstown*, 16 N. H. 53.

Selectmen may limit the amount of money to be expended in repairs of the highways, and the town will not be liable beyond that sum.—*Chalmers v. Andover*, 63 N. H. 3.

Materials, Purchase.—Highway surveyors, upon order of the selectmen, may purchase timber, plank, and other materials necessary for the repair of highways and bridges in their district, at the expense of the town. *Ibid.*, S. 10.

A surveyor may purchase materials for the repairs of highways in his

district, when necessary, at the cost and charge of the town.—*Brown v. Rundlett*, 15 N. H. 360; *Wells v. Goffstown*, 16 N. H. 53.

If a surveyor of highways exercises his best judgment faithfully and diligently within the limits of his authority, the town is bound by his acts.—*Palmer v. Carroll*, 24 N. H. 317.

He may purchase such materials at the expense of the town, but work upon them must be paid for with the money in his hands, or the labor he is entitled to command upon his warrant as surveyor.—*Rollins v. Chester*, 46 N. H. 413.

Remove Gravel.—They may remove gravel, rocks, or other materials from one part of a highway in their respective districts, doing no damage to the adjoining land, to any other part of the same, or to any other highway therein, for the purpose of grading or otherwise repairing the same. *Ibid.*, S. 11.

Lumber, Etc., Removed.—If any timber, lumber, stone, or other thing is upon a highway, incumbering it, the highway surveyor may immediately remove the incumbrance, and hold the same in his possession until the costs of such removal are paid. C. 77, S. 1.

If the cost of such removal be not paid within thirty days, the surveyor may sell the timber or other thing removed upon giving four days notice by posting notices in two public places in the town. *Ibid.*, S. 2.

TAXATION.

See "Selectmen."

Towns, Union or Set-off.—No portion of the territory of any town shall be united with or set off unto another town or city, unless the legislative enactment providing for such union or set-off shall be ratified by two-thirds of the voters of each town or city affected, present and voting at the annual election of town or city officers. Acts of 1903, C. 99, S. 1.

Such act shall be voted upon by ballot at the regular annual meeting for the election of town or city officers held next after the passage of the act. *Ibid.*, S. 2.

TOWN CLERK.

Election, Duties, Etc.—Every town, at the annual meeting, shall choose by ballot and by major vote, a town clerk, who shall record all votes passed by the town while he remains in office, and discharge all the duties of the office according to law. C. 43, S. 1.

Clerk Pro Tempore.—If the town clerk be absent from any town meeting, the town shall choose, by ballot, and by major vote, a town clerk *pro tempore*, who shall be sworn and shall perform all the duties of town clerk for the time being. *Ibid.*, S. 2.

Deputy Clerk.—The selectmen of towns may appoint a deputy town clerk, who shall qualify in the same manner as town clerks now qualify,

and shall perform all the duties of town clerk in case of absence by sickness, resignation or otherwise of the clerk of the town. Acts of 1899, C. 90, S. 1.

Assignments of Wages.—No assignment of, or order for, wages to be earned in the future shall be valid against a creditor of the person making it, until it has been accepted in writing and a copy of it and of the acceptance has been filed with the clerk of the town where the party making it resides. The clerks of towns shall keep for public inspection an alphabetical list of all such orders and assignments filed with them. C. 215, S. 4.

Assignments of wages to be earned must be in writing and filed with the town clerk.—*Thompson v. Smith*, 57 N. H. 306.

An assignment of wages to be earned, with the acceptance of the employer written upon the face instead of on the back of the instrument, being duly filed with the town clerk, is good against a creditor of the laborer who seeks to reach the fund by trustee process.—*Lewis v. Lougee*, 63 N. H. 287.

Attachments of Real Estate.—Real estate may be attached on a writ of mesne process by the officer leaving an attested copy thereof and of his return of the attachment thereon at the dwelling-house or the office of the town clerk of the town in which the real estate is situate. The town clerk shall certify thereon the time when the copy was received, and shall keep it on file.

He shall keep a general index of all attachments so made and of the copies of all writs and processes filed with him, which index shall be open to public inspection at all times. He shall enter therein at the time of receiving a copy a record of the exact time when it was received, of the court to which it was returnable, and of the names of the plaintiff and defendant in the action. The defendants' names shall be alphabetically arranged.

The officer making such attachment shall, at the time of making it, pay to the town clerk the sum of twenty cents, which shall be in full for his services in receiving and filing the copy, certifying the time of receiving it, and entering the attachment upon the index. C. 220, SS. 3-6.

Where a deputy sheriff returned upon a writ of attachment, under a particular date, that he attached a form and left with the clerk of the town, where the form was a copy of the writ and return, it was *held* that the court could not upon such return intend that the copy of the writ and return were left with the clerk on the day under which it was returned.—*Kittredge v. Bellows*, 4 N. H. 424.

It is the leaving a copy of the writ and return with the town clerk which constitutes an attachment of real estate.—*Pemigewasset Bank v. Burnham*, 5 N. H. 275. So *Kittredge v. Bellows*, 7 N. H., 399.

Where the officer who has served a writ of attachment made a return and filed a copy thereof with the town clerk, afterwards amended the copy of the return so left with the town clerk, the attachment was *held* to have been made on the date of such amendment.—*Cogswell v. Mason*, 9 N. H. 48.

Where an officer returns that he made an attachment of real estate upon a writ by leaving at the dwelling-house of the clerk of the city in which the land is situate an attested copy of such writ and of his return thereon, and it

appears that the copy left is neither attested nor a true copy of the writ, such deputy is guilty of a false return.—*Clough v. Monroe*, 34 N. H. 381.

Dogs; Licenses, Hydrophobia, Description.—Every license issued to the owner of a dog shall have printed thereon a description of the symptoms of the disease in dogs known as hydrophobia, said description to be supplied by the secretary of the state board of health, lunacy, and charity to the clerks of the several cities and towns, upon application thereof. Acts of 1891, C. 60, S. 4.

Dogs; Licenses; Fees.—The fee for every license for a year shall be two dollars for a male or spayed female dog and five dollars for a female dog, and such proportionate sum for licenses for dogs becoming three months of age after the first day of May, or which may be brought from out of the state after the first day of May, as the remaining portion of the year bears to the sum required for a license for a whole year; *provided*, that the owner or keeper of such spayed female dog shall furnish a certificate from the person performing the operation, to the satisfaction of the clerk of the town wherein such dog is owned or kept. Acts of 1903, C. 109, S. 1.

The penalty imposed for keeping a dog without a license is recoverable by criminal action in the name of the state.—*State v. McConnell*, 70 N. H. 158.

ELECTIONS.

Affidavits, Blanks for, Etc.—The town clerk of each town shall have with him, at every town meeting, blanks for making affidavits as required by section 16 of this chapter, and shall furnish the same to any voter on request therefor. He shall record in the record of the meeting the names of all voters making such affidavits, and shall keep the affidavits on file. C. 39, S. 19.

The right of voting was (is) a right that must be exercised personally by the voter at the meeting held for the purpose—articles 12, 13, 27, etc., of the Constitution cited by the judges.—*Opinion of Justices*, 44 N. H. 635.

In an election for choice of representative in Congress the respective duties of the moderator and town clerk are prescribed by the Constitution. It is the duty of the moderator to sort and count the votes given in, and to make a true public declaration thereof in the meeting; and it is the duty of the town clerk to make a true record and return of the same to the secretary of state according to such public declaration.—*Bell v. Pike*, 53 N. H. 473.

Ballots Prepared.—In case a town adopts the provisions of chapter 78, Acts of 1897, concerning elections, the ballots shall be prepared by the town clerk, and printed at the expense of such town. Acts of 1897, C. 78, S. 8.

Specimen Ballots.—The town clerk shall post five copies of the specimen ballots furnished him in the most public places in the town immediately after receiving the same; and on the morning of the day of election he shall cause ten copies of such ballots to be posted outside of the guard-rail in the room in which the election is held. *Ibid.*, S. 11.

Ballots, Distribution.—The secretary of state shall send in a sealed package the ballots printed by him to the several town clerks so as to be received by them twelve hours prior to the day of election. The clerks shall on delivery to them of such package return receipts therefor to the secretary. *Ibid.* S. 12.

Delivery.—The town clerk shall deliver to the election officers before the opening of the polls on the day of any election, the sealed package received by him from the secretary of state; and at the opening of the polls the seal of the package shall be publicly broken by the town clerk, and the ballots shall be delivered by him to the ballot clerks.

In case the ballots shall fail to be duly delivered, or in case after delivery they shall be destroyed or stolen, it shall be the duty of the town clerk to cause other ballots to be prepared substantially, as far as may be, in the form of the ballots so wanting. *Ibid.*, S. 13.

Disposition of Ballots.—Town officers whose duty it is to receive and count ballots cast at biennial elections for United States, state and county officers and for supervisors of the check-list and moderator, shall, immediately after the ballots are counted and sealed, deliver them thus sealed to the town clerk or a representative designated by such clerk, who shall without breaking the seal or otherwise changing the condition of the package, deposit the same in the office of such town clerk, who shall keep such ballots for a period of sixty days. All ballots remaining in possession of the town clerk shall be destroyed at the expiration of sixty days after an election. Acts of 1897, C. 82; Amended by Acts of 1903, C. 30.

Presidential Electors, Etc.—The town clerks of the several towns shall make a true and certified copy of the record of the votes given in at any election of electors of president and vice-president of the United States, representatives in Congress, governor, councilor, senator, and representative to the general court, and shall forward the same in sealed packages to the secretary of state within five days from the date of such election. Acts of 1897, C. 24, S. 1.

In case the return required by the preceding section be not received at the office of the secretary of state within the time prescribed by law, it shall be his duty immediately to notify the clerk of the town from which such return has not been received. Thereupon the delinquent town clerk shall forthwith forward such return. C. 35, S. 4.

Returns of Votes, How Made.—The town clerk shall make a true and certified copy of the record of the votes given in at any election of county officers, and shall forward the same in a sealed package bearing a superscription stating the nature of its contents, to the clerk of the supreme court of the county within five days from the date of such election. Acts of 1897, C. 24, S. 2.

Ballots, Preservation.—The moderator shall deliver to the town clerk duly sealed and certified the package of ballots for United States, state and county officers, in the presence of the selectmen before the adjournment of the meeting; and the town clerk, in their presence, shall make thereon and subscribe a minute of the day and hour when received. C. 34, S. 13.

Penalty for Neglect to Return Votes.—If any town clerk shall neglect to make any return of votes for governor, councilor, senator, representative in congress, electors of president and vice-president, register of deeds, county treasurer, county commissioner, supervisors, or moderator, or other state, town, or county officer, he shall be fined not exceeding five hundred dollars. C. 39, S. 1.

Correction of Returns; Penalty.—If the clerk of any town shall make an incorrect or insufficient record or return of the votes given therein at any meeting for any officer, the officers by whom the votes are opened and counted may require such clerk at his own expense, to come in and amend his record or return, according to the facts of the case.

If any clerk shall neglect or refuse to appear and amend he shall be fined not exceeding five hundred dollars. *Ibid.*, SS. 3, 4.

When the town clerk made a true record of the public declaration of the vote by the moderator, his official duty, so far as the record is concerned, was performed. The declaration of the moderator is to be regarded as the only authentic voice of the meeting over which he presides; and if the clerk should undertake to thwart the will of the meeting as thus expressed, by entering upon the town book some fact known to himself, which, if true, might have the effect of changing the result, he would be guilty of an usurpation of authority; and such entry could only be rejected as forming no part of the record he is required by law to make.—*Bell v. Pike*, 53 N. H. 482.

False Record, Penalty.—If the clerk of any town or place shall wilfully and corruptly make a false record of any vote or other proceeding of any legal town meeting, or any false copy of any record, or any false certificate or return of votes, he shall be imprisoned not exceeding five years. *Ibid.*, S. 5.

Method of Voting.—The town clerk shall check the name of the voter on the check-list, under the direction of the moderator. C. 34, S. 3.

The votes shall be sorted and counted by the moderator in the presence of the selectmen and town clerk, and the town clerk shall make a fair record thereof at large in the books of the town. *Ibid.*, S. 6.

The selectmen and town clerk shall assist in sorting and counting the votes. *Ibid.*, S. 7.

The town clerk shall have with him in the meeting, during its continuance, all the laws in force relating to elections. *Ibid.*, S. 11.

Estrays and Lost Goods.—The person finding money or goods, or finding and taking up a stray beast, the owner of which is unknown,

shall give to the town clerk a notice in writing, describing the money, goods, or beast, within six days after so finding or taking up the same.

The town clerk shall record such notice in a book to be kept by him for that purpose. C. 145, SS. 1, 2.

Proceedings are not required where the owner of property is known.—*Jones v. Smyth*, 18 N. H. 119.

A declaration under the statute to recover twice the value of stray beasts found, etc., whereof no notice has been given, must allege that the owner was unknown.—*Hardy v. Nye*, 63 N. H. 612.

Fires, Records and Returns.—It is the duty of the clerk to record in a book provided by the insurance commissioner a written statement of the facts relating to the causes of fires, filed with him by the board of firewards, or engineers, or the selectmen. He is required to make a transcript of such record upon a blank provided by the commissioner for the six months next preceding, and forward the same to the commissioner within fifteen days after the first day of July, and of January, in each year. He also transmits to the commissioner at any time, upon his request, a copy of the record as to any particular fire, or any facts concerning it. C. 115, SS. 22, 23.

Jurors, How Drawn.—Upon receipt of a *venire* the town clerk shall notify the selectmen of the time and place by him appointed for drawing jurors, and shall post a notice thereof in some public place in the town, seven days at least before the time appointed.

The selectmen shall attend at the time and place appointed, and the town clerk in their presence and in the presence of such other persons as choose to attend, shall draw from the box so holden that the papers cannot be seen, the names of so many persons as are required by the *venire*. In the absence of the clerk, one of the selectmen shall draw the names. C. 209, SS. 11, 12.

Record.—If any person whose name is so drawn is dead, insane, or disabled by sickness, or has removed from town, the town clerk shall certify the fact on the *venire*, and draw another name.

The town clerk shall record the notice posted by him, the names of the selectmen present and of the persons drawn as jurors. *Ibid.*, SS. 13, 15.

Notice to.—The town clerk, a constable, or a selectman shall give to each juror, or shall leave at his abode, four days at least before the sitting of the court, a notice in writing of his selection as a juror, of the court he is to attend, and of the day and hour he is to appear. *Ibid.*, S. 16.

Venires Returned.—The town clerk shall certify upon the *venire* the names of the persons so drawn, and that they have been notified as aforesaid, and shall cause such *venire* to be returned to the clerk of

the court before the hour at which the juror is required to attend. *Ibid.*, S. 17.

Penalties for Neglect, or Fraud.— If any town clerk neglects to perform any of the duties enjoined by this chapter, he shall be fined by the court twenty dollars.

If any town clerk draws from the box a greater number of names than are mentioned in the *venire*, except in cases provided, or unlawfully puts a name, or suffers it to be put into the box after the box is delivered to him, or is guilty of any fraud or collusion in respect to the drawing of jurors, he shall be fined fifty dollars. *Ibid.*, SS. 19, 22.

Dog Licenses.— Clerks of towns shall issue licenses of dogs, and receive the money therefor, and pay the same into the treasuries of their respective towns on or before the first day of June of each year, retaining to their own use twenty cents for each license, and shall return therewith a sworn statement of the amount of moneys thus received and paid over by them. They shall also keep a record of all licenses issued by them, with the names of the keepers or owners of dogs licensed and the names, registered numbers, and descriptions of all such dogs. Acts of 1891, C. 60, S. 5.

Dogs are property and when kept with collars having their owners' names engraved thereon, as required by law, are as fully within the purview of the statute against willful and malicious injury as any other species of personal property.— *State v. McDuffie*, 34 N. H. 523.

"J. P. M." engraved on a dog collar did not fulfill the requirement of the statute as to the name of the owner of the dog. Actual notice of the ownership of the dog will not make the person liable for killing him.— *Morey v. Brown*, 42 N. H. 373.

Libraries, Information to State Librarian.— Every town clerk shall within thirty days after the annual town meeting report to the state librarian the name of any public library in the town; the names and addresses of the officers, the manner of election or appointment of the same; the town, person, or persons in whom the ownership of such library is vested; for whom the beneficiary use is provided, and the number of volumes owned by said library. He shall report the names of officers elected or appointed at any other time immediately after their election or appointment; and, if there is no public library within the town, he shall annually, within said time, notify the state librarian of the fact. Acts of 1893, C. 31, S. 1.

Marriage, Notice of Intentions.— All persons proposing to be joined in marriage within the state shall cause notice of their intention, with the full Christian and surnames, color, occupation, birthplaces, residences, and ages of the parties, their condition, whether single or widowed, whether first, second, or other marriage, and the full Christian and surnames, residences, color, occupation, and birthplaces of their parents, to be entered in the office of the clerk of the town in

which they or either of them dwell, if either of them dwell in this state; otherwise in the town in which the marriage is celebrated; if there be no such clerk in the place of their residence, the like entry shall be made with the clerk of any adjoining town. The clerk shall record the notice in a book to be kept for that purpose. C. 174, S. 5.

Marriage of Non-residents, Notice of Intentions.—The notice of intention of marriage required by sections 5 and 6 of chapter 174 of the Public Statutes shall, in case either of the parties is a non-resident of this state, be filed five days before the clerk shall issue a certificate setting forth the facts as required by said sections. Acts of 1903, C. 93.

Militia Roll Returns, Penalty for Neglect.—Any town clerk who neglects to forward a certified statement of the militia roll to the adjutant-general, or of persons drafted or enlisted, to the commander-in-chief, as required by law, shall forfeit twenty dollars. Acts of 1895, C. 59, S. 8.

Oaths of Town Officers.—Every town officer shall take the oath of office by law prescribed before the moderator, town clerk, one of the selectmen, or a justice of the peace, who are authorized to administer such oath. C. 44, S. 1.

If the town records state that the selectmen chosen "being present, took the oath of office by law prescribed," it is sufficient, without stating before whom it was taken.—*Mason v. Thomas*, 36 N. H. 302.

The mayor of a city is empowered to administer official oaths to all city officers. The taking of an official oath is sufficiently proved by a record showing that the oath by law prescribed has been taken, without showing before whom it was taken, or in what official capacity he administered the oath.—*Drew v. Morrill*, 62 N. H. 23.

Oaths of Town Officers, at Meeting.—Any person chosen to an office may be notified by the moderator, town clerk, or one of the selectmen, in open meeting to take the oath of office; and such person, if present, shall immediately in open meeting take such oath or declare his refusal. Any person so chosen and notified, and not exempt from service, who shall refuse for one hour to take the oath shall be fined five dollars. C. 44, S. 3.

Oaths of Town Officers, Notice.—The town clerk shall forthwith, after the choice of any town officers, by a precept under his hand, direct a constable or police officer to notify the persons so chosen to appear before him within six days after receiving the notice and take the oath by law prescribed. The officer shall within four days give personal notice to the persons named or leave a notice in writing at the abode of each, and make return of the precept and of his doings therein to the town clerk within six days. *Ibid.*, S. 4.

The public has a right to the services of all the citizens, and may demand

them in all civil departments as well as in the military.—*Bowles v. Landaff*, 59 N. H. 164; *Edwards v. United States*, 103 U. S. 471.

The common-law obligation to accept town offices is affirmed in *General Laws*, chapter 41.—*Attorney-General v. Taggart*, 66 N. H. 362.

Oaths of Town Officers, Record.—The town clerk shall make a record of every oath of a town officer taken in open town-meeting at the time of the election, and of every such oath taken before him at any other time and place, the import of which record may be that the officer took the oath of office prescribed by law; and he shall record and keep on file every certificate filed with him pursuant to the preceding section. *Ibid.*, S. 8.

Amendments of the records of towns must be made by the person who was in office at the time when the proceedings were had; but it is not necessary that he should hold office at the time of making the amendment. The proper form of making such amendment is to draw out the amendment and annex it, with the order of court allowing it, to the original record.—*Gibson v. Bailey*, 9 N. H. 168.

A certificate, that selectmen were "qualified by J. C. Clement," is not evidence that they took the oath of office according to the statute.—*Ainsworth v. Dean*, 21 N. H. 400.

When it appeared that the record made of a collector's oath was that "he took the oath by law required," it was held sufficient. A record that the officer took the oath of office imports that he took the oath of office prescribed by law.—*Gordon v. Clifford et al.*, 28 N. H. 402; *Scammon v. Scammon*, *Ibid.* 419.

When a title to real estate is derived from a collector's sale for taxes, it must appear by the record that he took the oath of office by law prescribed, otherwise the sale is void.—*Proprietors of Cardigan v. Page*, 6 N. H. 182.

Officers' Names and Addresses, Reported.—Every town clerk within thirty days after the annual meeting shall report to state officers the names and postoffice addresses of town officers. If any of such local officers are not chosen or appointed within said thirty days, the clerk shall so report to the corresponding state officer, and he shall make like reports of other times immediately after the election or appointment of local officers. He shall, annually, and before the first day of September, make returns to the state librarian of the names and post-office addresses of the trustees, officers and librarians of all public libraries within the town. C. 43, S. 3.

Partnership.—Every partnership firm shall file with the clerk of the town where such firm has its principal place of business, a certificate of the names and residences of the persons composing the firm, which shall be recorded by such clerk in a book to be kept for that purpose. C. 121, S. 1.

Certificates of limited partnerships, with the affidavits annexed, are also filed with the town clerk, and notices of dissolution, in the office where the original certificates are recorded. C. 122, SS. 4, 10.

Public Records, Copies.—The town clerk shall furnish to any person requesting it and tendering pay therefor, an attested copy of any public record in his custody; and for neglect or refusal to do so, he shall be fined twenty dollars. C. 43, S. 46.

Custody.—No town officer having custody of its public records or documents shall loan the same or permit them to be taken from the place where they are usually kept, except when necessary for the discharge of official duty or upon the summons of a court of competent authority; and they shall be open at all proper times for public inspection and examination. *Ibid.*, S. 45.

Preservation.—All books, records, papers, vouchers, and documents which shall be in the possession of any officer, committee, or board of officers of the town, which are not needed elsewhere by them in the discharge of official duty, shall be deposited in the office of the town clerk, and shall be there kept and preserved by him as public records of the town. *Ibid.*, S. 42.

The town clerk shall attach to copies of public records made by authorization of the selectmen, certificates of their correctness, and showing when, by whom, and under what authority they were made, and shall also preserve the originals. *Ibid.*, S. 44.

Reports of Selectmen, Etc., Distributed.—The town clerk shall without delay forward two copies each, to the state librarian and the New Hampshire Historical Society of Concord, of all printed reports furnished to him by the chairman of the board of selectmen, of school boards, village commissioners, and other public officers of the town.

Any town clerk failing to comply with the law as provided in this chapter shall be liable to the fine as provided in chapter 43, section 3, of the Public Statutes. Acts of 1893, C. 31, SS. 4, 5.

Taxes, Tender of; Fees.—If a tender (of taxes due) is made in the absence of the collector or his administrator, at his house, the party tendering shall, before the time of redemption expires, leave the money so tendered with the town clerk, for the use of such collector, with a notice of the tender which shall be forthwith recorded by the town clerk, who shall give a receipt for the same, and who shall be paid by the person making such tender, as his fees, ten per cent upon the amount so tendered. C. 61, S. 13.

Taxes; Sales, Returns, Records.—The collector shall, within ten days after any sale, deliver to the town clerk an account of the sale, with the charges thereof under oath, copies of the newspapers in which the advertisement was published, and of the advertisement posted, with an affidavit that it was so posted, which shall be kept on file; and the account, advertisement, and affidavit shall be recorded by the town clerk. *Ibid.*, S. 7.

When a collector sells land for taxes, it must be by auction to the highest bidder and a copy of the sale must be lodged with the town clerk within ten days after the sale. But an account of the sale need not be made by the collector. It may be made by the clerk.—*Proprietors of Cardigan v. Page*, 6 N. H. 182.

If the return of the collector of his proceedings in making a sale of land for taxes is put upon file in the town clerk's office, it is not necessary that it should be copied into the records.—*Gibson v. Bailey*, 9 N. H. 168.

The omission of the collector to lodge the newspapers, containing the advertisements with the town clerk, will not avoid the sale.—*Smith v. Messer*, 17 N. H. 420.

Births, Marriages and Deaths, Record, Transcript.—Every town clerk shall, annually, on or before the first day of March, furnish to the selectmen a transcript of his record of births, marriages and deaths during the period prescribed by the registrar of vital statistics for the state. C. 43, S. 4.

The town clerk is required to transcribe in full, upon blanks furnished by the registrar of vital statistics, all records of births, marriages, and deaths, in the possession of the town not already returned, and to transmit the same, properly certified, to the department of vital statistics, within such reasonable time as may be allowed by such registrar. Acts of 1905, C. 21, S. 2.

TOWN TREASURER.

Election; Appointment.—Every town, at the annual meeting, shall choose a treasurer by ballot and by major vote. C. 43, S. 17.

If any town, at the annual meeting, shall fail to elect a treasurer, it shall be the duty of the selectmen to appoint one within six days thereafter, to hold office during their pleasure or until another is chosen or appointed and qualified in his stead; and they shall fix his compensation and make a written contract with him in relation to it. *Ibid.*, S. 18.

No person shall hold the offices of treasurer, and selectman, collector of taxes, or auditor at the same time. *Ibid.*, S. 34.

Bond.—Every person elected or appointed to the office of town treasurer shall within six days after his election or appointment, and before entering upon the duties of his office, give bond, with sufficient sureties to the acceptance of the town or the selectmen, for the faithful performance of his official duties, in form like that of county officers, and in default thereof the office shall be vacant. *Ibid.*, S. 19.

In a collector's bond given to the selectmen of a town it was no objection that they were made the obligees.—*Horn v. Whittier*, 6 N. H. 88.

A collector's bond was held good although it had no witness and was wrongly dated on Sunday. A bond takes effect from its delivery. The date is immaterial.—*Pierce v. Richardson*, 37 N. H. 313.

Duties.—The town treasurer shall have the custody of all moneys belonging to the town, and shall pay out the same only upon orders of the selectmen. He shall keep in suitable books provided for the purpose a fair and correct account of all sums received into and paid from the town treasury, and of all notes given by the town, with the particulars thereof. At the close of each fiscal year he shall make report

to the town, giving a particular account of all his financial transactions during the year. He shall furnish to the selectmen statements from his books, and submit his books and vouchers to them and to the town auditors for examination, whenever so requested. *Ibid.*, S. 20.

The town treasurer, unless the trust otherwise provides, shall have the custody of all trust funds and securities held by the town, and shall keep a separate account with each trust. *Ibid.*, S. 21.

Town notes shall be signed by a majority of the selectmen and countersigned by the treasurer. *Ibid.*, S. 22.

Original entries made by a town officer in the usual course of business and in pursuance of his official duty are admissible in evidence.—*Rindge v. Walker*, 61 N. H. 58.

Removal from Office.—The selectmen may remove from office any treasurer who, in their judgment has become insane or otherwise incapacitated to discharge the duties of the office, or who has neglected, for ten days after a written notice, to furnish a bond for their acceptance. They may proceed without notice in any case arising under this section. *Ibid.*, S. 10.

A collector of taxes, while still undischarged from liability as such, is disqualified to hold the office of selectman.—*Attorney-General v. Marston*, 66 N. H. 487.

Collector, Payment.—Every collector shall, on the first Saturday of every month, pay to the town treasurer all money by him collected up to that time, shall give to him an itemized account of all dog taxes included in such payment, and shall submit his tax-books and lists to the treasurer for inspection and computation; and if the treasurer discovers any errors therein, he shall immediately notify the selectmen thereof. He shall also submit his tax-books and lists to the selectmen for inspection and examination, whenever so requested by them. He shall make report to the town at the end of each fiscal year of the taxes collected during the year, and submit his tax-books, lists and accounts to the auditors for examination. *Ibid.*, S. 28.

Dog License Money.—Each town treasurer shall keep an accurate and separate account of all moneys received and expended by him under the provisions of the law relating to dogs. Acts of 1891, C. 60, S. 6.

Extents.—Each town treasurer may issue extents under his hand and seal, in cases authorized by law, and such extents shall be deemed to be executions against the person and property. C. 66, S. 1.

In general, the act of issuing an extent for taxes seems to be ministerial, and if issued for a larger sum than is due the process will be no protection to the officer. Under General Statutes, section 24, selectmen have no authority to issue an extent against a highway surveyor for an unexpended balance of highway taxes on his list.—*Kimball v. Russell*, 56 N. H. 493.

A *de facto* collector is liable to an extent for neglect to pay to the town

treasurer the taxes collected under a defective warrant.—*Mason v. Fowler*, 70 N. H. 291.

An extent against a delinquent collector by a town treasurer is void if issued for a greater amount than is due, or if not preceded by the demand for uncollected taxes expressly required by the warrant.—*Ayer v. Goss*, 71 N. H. 66.

Hawkers' and Peddlers' Licenses.—Every person licensed under the preceding section (3) shall pay to the treasurer of each town mentioned in his license the sums following before offering or exposing for sale any goods, wares or merchandise: For every town containing not more than one thousand inhabitants, according to the census next preceding the date of his license, five dollars; for towns containing more than one thousand and less than two thousand inhabitants eight dollars; for towns containing more than two thousand and less than three thousand inhabitants ten dollars; and for every thousand inhabitants in excess of three thousand one dollar. Acts of 1897, C. 76, S. 4.

Hospital, Contract with.—The treasurer of any town accepting the provisions of this act shall make a contract with such hospital concerning the admission of patients into the hospital; and the rates, rules and regulations governing such admission shall be approved by the selectmen of the town before the payment of any money to said hospital. Acts 1899, C. 13, S. 3.

Town Bonds.—The treasurer of a town which shall issue bonds under this act shall make a register in a book kept for that purpose of the amount, number, date and time of payment of all such bonds. In case such bonds shall be payable to the registered holders thereof, he shall also register the name and address of such holders. Acts 1895, C. 43, S. 6.

TREE WARDENS.

Appointment; Duties.—The selectmen of towns shall annually appoint one or more tree wardens, who shall be discreet persons, resident in the town where appointed, interested in the planting, pruning and preservation of shade and ornamental trees in public ways and grounds. It shall be the duty of tree wardens to examine carefully the trees situated in any public way or ground within the town, and to mark plainly such trees as they think should be controlled by the municipality, for the purpose of shade and ornamentation, by driving into each tree at a point not less than three (3) nor more than six (6) feet from the ground, on the side towards the highway, a nail or spike with the letters "N. H." cut or cast upon the head. Such spikes or nails shall be furnished to the tree warden by the secretary of the forestry commission.

They may designate from time to time, in the same manner, such other trees within the limits of public ways or grounds, as in their judgment should be preserved for ornament or shade. Whoever desires the cutting and removal, in whole or in part, of any public shade

or ornamental tree, may apply to the tree warden, who shall give a public hearing upon the application after duly publishing and posting notices thereof in two or more public places in the town, and also upon the tree, or trees, which it is desired to cut or remove; *provided*, however, that the tree warden, if he deems it expedient, may grant permission for such cutting or removal without a hearing, if the tree, or trees, in question are on a public way, outside of the residential part of the town limits, such residential part to be determined by the tree warden. Acts of 1901, C. 98, SS. 1, 2, 5.

Marking Trees.—Towns shall have control of all shade and ornamental trees situated in any public way or grounds within their limits which the tree warden deems reasonably necessary for the purpose of shade and ornamentation; and it shall be the duty of the tree wardens, as soon as possible after their appointment, to carefully examine the trees so situated, and to plainly mark such trees as they think should be controlled by their municipality. They are required to mark such trees with iron disks, furnished by the forestry commission, to be attached with iron spikes, in the manner prescribed by the statute. Acts of 1903, C. 119.

Trust Funds.—Towns may take and hold in trust, gifts, legacies and devises made to them for the establishment, maintenance and care of libraries, reading rooms, parks, cemeteries and burial lots, the planting and care of shade and ornamental trees upon their highways and other public places, and for any other public purpose that is not foreign to their institution or incompatible with the objects of their organization. Such funds for the improvement of the town or city, or any part thereof, or in aid of public libraries, and such objects as may be supported in whole or in part by funds raised by public taxation, may be paid into the town or city treasury, and so long as the same remain therein such town or city shall pay thereon an annual income at the rate of three and one-half per cent., which shall be expended in accordance with the terms of the trust by which such fund or funds are held.

Towns are authorized to receive from cemetery associations, or individuals, funds for the care of cemeteries, or from school districts therein sinking funds, and pay thereon an annual income not exceeding three and one-half per cent, which shall be expended in accordance with the terms of the trust, or contract, under which the same was received. C. 40, S. 5.

VILLAGE DISTRICTS.

How Established.—Upon petition of ten or more legal voters, inhabitants of any village situate in one or more towns, the selectmen of such town or towns shall fix, by suitable boundaries, a district in-

cluding the village and such adjacent parts of the town, or towns, as may seem to them convenient, for any or either of the following purposes: The extinguishment of fires, the lighting or sprinkling of streets, the supply of water for domestic and fire purposes, the construction and maintenance of sidewalks, and main drains or common sewers, and the appointing and employing of watchmen and police officers. They shall cause a record of the petition and their doings thereon to be recorded in the records of the towns in which the district is situate.

Such selectmen are required also to call forthwith a meeting of the legal voters, residing in the district to see if they will vote to establish the district, and if so, to choose necessary officers therefor.

At such meeting the legal voters may, by vote, establish the district, give to it a name, and choose necessary officers therefor to hold office until the first annual meeting thereof; and the district shall thereupon be a body corporate and politic, and have all powers in relation to the objects for which it was established that towns have or may have in relation to like objects, and all that are necessary for the accomplishment of its purposes. C. 53, SS. 1, 2, 3.

Officers.— The officers of such districts consist of a moderator, a clerk, three commissioners, a treasurer, and such other officers and agents as the voters thereof may judge necessary for managing the district affairs, or as may be directed by law to be chosen.

The moderator, clerk, treasurer and commissioners shall severally qualify, and possess the same powers and perform the same duties in respect to the district's meetings and business affairs that the moderator, clerk, treasurer and selectmen of towns respectively possess and perform in respect to like matters in towns. They shall hold office for one year and until their successors are chosen and qualified. The commissioners shall appoint a chief engineer, and two assistant engineers to serve in the fire department for the ensuing year, and may remove said engineer, or engineers, for cause, after hearing, and shall fill vacancies in the offices of clerk and treasurer and in their own board in the same manner as selectmen are required to fill vacancies in corresponding town offices. *Ibid.*, S. 7.

Meetings.— Meetings of the district are called and held and their proceedings conducted in general in like manner as in towns. Whenever a district votes to raise money by taxation, the clerk is required to deliver a certified copy of such vote to the selectmen of each town which contains any part of the district. If the district is situated wholly within one town, the tax is assessed by the selectmen of that town and committed to the collector of taxes thereof as required by law. If it is situated in two or more towns, the selectmen of all such towns act together as a joint board in assessing such taxes, and commit the same to some person by them to be appointed with a warrant

requiring him to collect the same and pay the money so collected to the treasurer of the district. *Ibid.*, SS. 8-11.

Eminent Domain.—A district may exercise the powers of towns in the condemnation of land for their use where it cannot be obtained for a reasonable price, for any of the purposes for which it was organized. The proceedings in such cases are the same as in the taking of land for highways, located in one town or two adjoining towns, as the case may be. *Ibid.*, S. 12.

Dissolved.—Any such district and any district now in existence having the rights and powers of a village fire-district, may, by a two-thirds vote of its legal voters, terminate its existence and dispose of its corporate property. *Ibid.*, S. 15.

VOTERS.

Qualifications.—Every male inhabitant of each town, being a native or naturalized citizen of the United States, of the age of twenty-one years and upwards, excepting paupers and persons excused from paying taxes at their own request, shall have a right at any meeting to vote in the town in which he dwells and has his home. C. 31, S. 1.

No person is considered a pauper within the meaning of the preceding section unless he has been assisted as such within ninety days prior to the meeting in which he claims the right to vote. *Ibid.*, S. 2.

The law also provides that no soldier or sailor who served in the late Rebellion and was honorably discharged, shall be deprived of his right to vote by reason of having received assistance from any town or county. *Ibid.*, S. 3.

The foregoing provisions of the law are modified by an amendment of the state constitution adopted March 10, 1903, which provides that no person shall have the right to vote or be eligible to office under the constitution of this state who shall not be able to read the constitution in the English language and to write; this provision, however, is not to apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who was sixty years of age or upward on the first day of January, A. D., 1904.

Check-lists.—All persons whose names are entered on the check-list as corrected are deemed legal voters; and no person whose name is not upon the list is allowed to vote unless his name was left off by mistake, and his right to vote was clearly known to the supervisors before the check-list was originally posted. C. 32, S. 12.

WATCHMEN.

Appointment.—The selectmen, by authority of a vote of the town, may appoint night watchmen, fix their stations and limits, prescribe

their duties, and contract for and pay them a reasonable compensation. They are appointed and qualified in the same manner and have while on duty the same powers as police officers.

Every watchman may arrest any person whom he shall find committing any disorder, disturbance, crime, or offense, or such as are strolling about the streets at unreasonable hours, who refuse to give an account or are reasonably suspected of giving a false account of their business or design, or who can give no account of the occasion of their being abroad. C. 249, SS. 8-10.

A town may lawfully appropriate money to pay for the services of a watchman.—*Knowlton v. New Boston*, 72 N. H. 590.

VERMONT

VERMONT.

INTRODUCTORY.

The state of Vermont bears a general family resemblance to the other states of New England in the organization and administration of its town government. In the main, like officers are chosen by the voters in town meetings and similar duties are performed by them. There are certain peculiarities, however, in the conduct of town affairs which are worthy of notice.

The methods of taxation, for example, are unlike those of any other state in New England. Three groups of officers, with the aid of the town clerk, perform the duties of appraisal and assessment. The initial step is taken by the listers, who make annually a list of the taxable property of the town, based upon the returns of the individual tax-payers, and the quadrennial appraisal of real estate by the listers made, as its name indicates, once in four years. The individual tax-payer is required to make each year a return to the listers of his real and personal estate upon a blank inventory, which is furnished by the secretary of state to every town for the use of its tax-payers. In case the tax-payer fails to make a return, or such return when made is not satisfactory to the listers, they are authorized to make up a list for him from information which they may be able to obtain from any other source.

One per cent of the appraised value of the real estate taxable to any person is added to the list of his personal estate, and the sum so obtained, with the amount of his taxable poll, constitutes his Grand List.

The quadrennial appraisal, of which the most recent was made in 1902, contains all the real estate in the town subject to taxation, including that of railroad companies not used in operating their roads, and is returned to the town clerk's office on a day fixed by statute. The tax-payer may appeal from this appraisal, if done seasonably, to the board of civil authority. From the individual lists and the quadrennial appraisal the listers make up the Grand List, which contains in detail the names of all the tax-payers of the town and all the personal and real estate set against them.

An abstract of the Grand List, showing the amount set against every tax-payer, is prepared by the listers and lodged in the town clerk's office, to enable each tax-payer to see what amount has been set against him; but before filing the Grand List with the town clerk, the listers appoint a hearing at which aggrieved tax-payers may present their complaints, and have inequalities, if any, corrected. Appeals may be taken from the decisions of the listers to the board of civil authority sitting as a board of abatement, whose judgments on such appeals are final. The board of civil authority, which acts as a board for the equalization of town taxes, is composed of the selectmen, town clerk, and the justices of the peace residing in the town.

The town clerk compares the abstract filed with him by the listers with the Grand List, and, if found correct, certifies to the correctness of the abstract, and transmits it to the secretary of state. Exact compliance with the provisions of the statutes in regard to notice to the tax-payer, filing of the Grand List, and the transmission of the abstract to the secretary of state, is necessary to the validity of the acts of the listers and of the taxes based upon them.

The rate-bills are made out by the selectmen, and delivered by them to the proper officer, for collection. A warrant is issued by a justice of the peace, except when a treasurer acts as collector, in which case he makes the warrant. This, attached to the tax-bill, is the authority under which the taxes are collected.

State taxes are assessed under an act of the legislature. County taxes are imposed by the assistant judges of the county court, either for general purposes, or under the specific authority of a special act of the legislature. Taxes for town purposes are voted by the tax-payers at the annual town meeting, and villages and fire districts likewise, at their annual meetings, vote such taxes as they are authorized by law to levy upon their inhabitants. State, county, and town taxes are, however, collected under one rate-bill and by one officer.

A different course is pursued in the assessment and collection of taxes in unorganized towns and gores. A commissioner and collector, sometimes one and the same person, are appointed by the governor. The commissioner prepares the lists from inventories made up by the inhabitants. The lists are returned to the county clerk's office after having been revised and corrected by the commissioner, and the taxes are assessed from them for state and county purposes. The expenditure of such taxes is committed to the commissioner, who exercises in general the same powers as the selectmen of towns.

The enactment of number 30 of the Public Acts of 1904, which

provides for the assessment and collection of a tax upon collateral inheritances, has introduced some new features into the tax system of Vermont. The listers are required to report to the commissioner of state taxes, upon blanks furnished by him, the names of all persons who have acquired within the year ending on the first day of April, prior to such report, real or personal estate in their town, on any interest therein passing from any deceased person, by will, by the law of descent, or by the intestate laws of the state. The tax imposed is five per cent of the value of such inheritances.

In the determination of the amount of such taxes, the state commissioner is assisted by the probate courts, which appoint appraisers of estates subject to such taxation. The act above mentioned is in continuance and enlargement of the provisions of the act of 1896, which first created a collateral inheritance tax in this state, but its provisions are so much more elaborate and extensive than those of the latter, that it practically amounts to new legislation.

The laws of Vermont concerning the relief and support of paupers have some distinctive features. The rather complex rules of pauper settlements, which prevail in the systems of poor relief in other states, are not found in Vermont. The basis of liability was greatly simplified by the "Poland Act" of 1886, which substituted residence acquired by the pauper himself, for other qualifications existing before, derived by descent, or otherwise. The one simple test applied to cases of application for relief is residence in a town for three years without receiving assistance from the town. This rule finds exception in the power granted to the overseer of the poor to furnish immediate relief to transient persons in need, without reference to their places of residence.

If the overseer neglects to provide for the support of a transient person in need of relief, any person supporting him may recover therefor in an action against the town; and if the person so supported is not of sufficient ability to pay the expenses of his support, the town may recover such expenses from the town in which the person last resided three years, supporting himself and family. (V. S., Sec. 3174.)

Two classes of minor municipal corporations, incorporated villages, and fire districts, are found in Vermont. These two forms of incorporation have grown out of the need of greater efficiency in local administration, and serve the purpose of securing to the inhabitants of the village or district certain rights and privileges which the territory outside of their limits ought not to be taxed for and the town itself does not possess. Incorporated villages are either the

creatures of the legislature, in which case a charter is granted by a special act constituting the inhabitants of a certain described district a body politic and corporate, with the powers set forth in the act of incorporation, or they may be organized under the general law.

In the latter case, they have their inception in a petition to the selectmen of a town, signed by a majority of the voters in town meetings residing in a village containing thirty or more houses. The selectmen to whom the petition is addressed cause a description of the village to be recorded in the town clerk's office, and posted in two or more public places in the village; and thereupon the residents in such village become a body politic and corporate with the powers incident to a public corporation.

The officers of a village consist of a clerk, five bailiffs or trustees, a treasurer, and a collector of taxes. The trustees are the governing body, and their duties and powers are like those of the selectmen of towns. The jurisdiction of such corporations, under the general law, includes such matters as streets, sidewalks, lanes, and commons; slaughter-houses and nuisances; a watch and street lighting; restraint of animals from running at large; the erection and regulation of buildings and the preservation of them; fire-engines and apparatus for extinguishing fires, and the establishment and regulation of fire companies. They may also establish and maintain public libraries and may appoint necessary police officers.

Village charters, besides the objects expressed in the general law, frequently include such purposes as the construction and maintenance of sewers and of an electric-lighting plant, or the procuring of a water supply, and confer the power to borrow money and issue bonds for such purposes. Authority is also given to make and establish by-laws, ordinances, and regulations touching fire, police, sanitation, streets, buildings, markets, shows, and other matters of local administration.

In these special acts of incorporation, the legislature usually reserves the right of future legislation to alter, amend, or repeal, and provides that the act shall not take effect unless accepted by the legal voters of the incorporated district, or of the town in which it is situated, within a period limited by the act itself.

The inhabitants of incorporated villages continue inhabitants of the town the same as if no corporation had been formed, and persons residing within the limits of a village, who are voters in town meetings, are voters in village meetings.

One or more fire districts may be established in a town, but may not exceed two miles square in extent. They are organized in a

similar manner to incorporated villages. Their officers are a clerk, a prudential committee of three persons, a treasurer, a collector of taxes, a chief engineer, and such assistant engineers as are necessary. The prudential committee and collector have the same power as town officers in assessing and collecting taxes; and the committee have authority to make contracts and expend money for the preservation of property in the district from damage by fire. The corporation may purchase and hold, in addition to the apparatus for extinguishing fires, real and personal estate, not exceeding in value ten thousand dollars, necessary for the preservation of the fire apparatus, and may regulate by by-laws the manufacture and safe-keeping of ashes, gunpowder, and combustibles.

In the following pages are given the laws at present in force concerning towns and town government, as they have been gathered by the author from the latest revision of the Public Statutes (1894) and the later volumes of Public Acts, including the Acts of 1904. A new revision of the statutes has been authorized by the state legislature, but it is not likely to be ready for adoption before the end of the current year.

STATUTES.

[References not otherwise designated are to Vermont Statutes, 1894, as amended.]

TOWN OFFICERS, IN GENERAL.

All town officers must be inhabitants of the town, and the removal from the town of any officer vacates the office which he holds. With the exception that one person cannot hold two offices at the same time, as is the case with listers, selectmen and certain other officers, no male citizen of the voting age is exempt from service if the town chooses to elect him to an office. As a rule, town officers are required to be sworn before entering upon the duties of their office, and their acts are void if they have not so qualified. The giving of an official bond is also a necessary qualification of some officers.

The record made by the town clerk is the only sufficient evidence of the election of a town officer, and no person will be held to have been duly chosen to an office, unless the clerk's record discloses the fact. The town clerk may amend his record, so as to show what actually took place at the town meeting.

Except where specifically prescribed by law, town officers are not entitled to compensation for their services, unless by vote of the town. The compensation of certain officers is fixed by the selectmen, while others are paid in fees which are prescribed by law.

Women twenty-one years of age may be elected or appointed to the office of treasurer, or clerk, of a town, or to both of said offices, if they have resided in the town one year next preceding such appointment. S. 2982.

The rights of town and city officers to compensation for official services are regulated by statute.—*McFarland v. Gordon*, 70 Vt. 455.

AUDITORS.

Election.—Three auditors are chosen annually at the annual town meeting. S. 2980.

Duties.—Town auditors shall immediately before each annual town meeting, examine and adjust the accounts of town officers, including the account which the treasurer is required to keep with the collector, and shall report such accounts, with the items thereof and the state of the town treasury, to the town at said meeting.

No claim for personal services, except where compensation is fixed by law or by vote of the town, shall be allowed to a town officer, but the

auditors shall report such claim, and the nature and extent of the services at said meeting. SS. 3059, 3060.

The omission of a claimant to present his claim against a town to the auditors does not bar his right to recover, if his claim is well founded and just.—*Judevine v. Hardwick*, 49 Vt. 183.

The auditors are appointed to revise and verify the accounts of the town officers of their doings for the protection of the town, and to report the result of their examination to the town, and the town takes final action in the premises.—*Davenport v. Johnson*, 49 Vt. 406.

The statute forbids the allowance by the auditors of any claim for personal services except when compensation is fixed by law or by vote of the town, but requires the auditors to report the nature and extent of such services to the annual town meeting.—*Barnes v. Bakersfield*, 57 Vt. 377.

BAILIFF.

See "Villages."

BOARD OF ABATEMENT.

See "Listers."

BOARD OF CIVIL AUTHORITY.

The board of civil authority in a town is composed of the selectmen, the town clerk and the justices residing in the town. S. 59.

Check-lists; Revision.— The board of civil authority have charge of the revision of the check-lists prepared by the selectmen, and upon notice to the voters of the town hold meetings for the purpose of such revision, at which they determine all questions relating to the lists of voters. They have power to administer the freemen's oath to a person producing before them his naturalization papers, and to all other persons claiming the right to vote. It is their duty to insert in the lists the names of voters omitted and those who will become of age on or before the day of election, and to erase therefrom the names of persons not entitled to vote, having first given notice as provided by law.

The list so corrected in the town clerk's office shall not be altered, except by adding thereto the names of persons who will at a freemen's meeting become qualified to vote, and also the names of persons who are legal voters, but whose names are omitted from the completed check-list, solely through clerical mistake. SS. 68-70, 79.

Elections.— No person shall be admitted to take the freeman's oath, or vote at an election, until he has obtained the approbation of the board of civil authority of the town in which he resides. S. 66.

It is the duty of the board of civil authority, or of such members of the board as may be present, to count and canvass the votes cast both at local and general elections, and at town meetings. SS. 120, 151, 141, 136, 132, 2985.

Jurors Nominated.— Members of the board of civil authority present at an annual town meeting nominate to the meeting such number of

persons for grand and petit jurors, to attend the county court for the year ensuing, as they judge will be the proportion of the town. S. 3065.

Polling-places Located and Equipped.—At least five days before a general or local election, the board of civil authority in each town shall determine the number and situation of the polling-places in such town; and the first constable and in his absence the chairman of the board of selectmen shall cause the same to be provided with a sufficient number of voting-booths in which voters may conveniently mark their ballots, and in marking be screened from the observation of others; and such booths shall be supplied with the proper conveniences for marking ballots. S. 113.

Polling-places, Additional; Ballot-boxes.—The board of civil authority in a town entitled to additional polling-places shall establish the same in suitable rooms in the villages of such towns, and shall equip the same with voting-booths and ballot-boxes according to the size of the check-list of such polling-places and provisions of existing laws in like manner as the central polling-place in such town is equipped.

When the board of civil authority in such a town appoints the ballot-clerks and assistant ballot-clerks for such town they shall appoint according to requirements of existing laws the necessary ballot-clerks and assistant ballot-clerks for the additional polling-places the same as for the central polling-place; and they shall also appoint three inspectors of election, two of said inspectors to be taken from the party casting the largest vote at the election next preceding and the other from the party casting the next largest number of votes at such election. One of said inspectors shall be the presiding officer and one the deputy-clerk for each additional polling-place. Acts of 1904, No. 5. SS. 3, 6.

BURIAL GROUNDS.

See "Selectmen."

Cemetery Commissioners.—If a town votes to place one or more of its public burial grounds under the charge of cemetery commissioners, instead of selectmen, it elects separately a board of five cemetery commissioners, who have the care and management of such burial ground, or grounds. The commissioners hold office for terms of one, two, three, and four years, from the next annual town meeting, and as the term of office of each expires, a successor is chosen for five years. Vacancies in the board are filled by the remaining commissioners. S. 3593.

The commissioners are empowered to lay out and embellish the burial grounds placed under their charge, and may sell and convey lots and pay the proceeds into the town treasury, such funds to be subject to the order of the commissioners and devoted to the care and improvement of the grounds, under their direction. They may make necessary by-laws and regulations in respect to such burial grounds, to be

recorded in the town clerk's office; but no such by-law or regulation shall restrain any person in the free exercise of his religious sentiments as to the burial of the dead. SS. 3594-3597.

CITIZENS.

See "Voters."

CLERK.

See "Town Clerk."

COLLECTOR OF TAXES.

Election; Vacancy.—The collector of taxes is chosen at the annual town meeting. When no collector is chosen at the annual meeting, the first constable acts as collector. The selectmen may fill a vacancy in the office until an election is had. SS. 2980, 2988, 3054.

The selectmen cannot fill a vacancy in any town office unless it occurs in one of the modes prescribed by statute.—*Cummings v. Clark*, 15 Vt. 653.

Bond.—The collector is required, before entering upon the duties of his office, to give a bond to the town for the faithful performance of his duties in a sufficient sum and with sufficient sureties to the satisfaction of the selectmen, who may require him to give an additional bond at any time when they judge his bond to be insufficient. S. 2994.

Bond, Additional, When Required.—If at any time the bond given by a collector of taxes of a town, village, school, or fire district becomes insufficient in the judgment of the selectmen, trustees, prudential committee, or the executive officers of the corporation to which such bond was given, they may require in writing an additional bond in such sum and with such sureties as they deem necessary.

If the collector does not, within ten days after being so notified, give such additional bond, his office shall be vacant. SS. 532, 533.

Duties, in General.—When a town at its annual meeting elects a collector of taxes he shall collect state, county, and town taxes, and warrants and rate bills for the collection of such taxes shall be directed to such collector and he shall collect and pay over such taxes agreeably to his warrant.

The collector of town taxes, when requested by notice in writing, signed by a majority of the selectmen, shall pay into the town treasury the moneys belonging to such town collected by him, and submit his tax book and list to the town treasurer for inspection and computation, and if he fails for ten days so to do, shall be fined not exceeding one hundred dollars.

The collector shall, on or before the first day of March in each year, pay over all moneys collected by him, to the treasuries to which they belong, and settle his account with the treasurers, and if he refuses or

neglects so to do, he shall be ineligible to re-election for the ensuing year. SS. 3056, 3057, 3058.

A tax collector is an officer of the law, and the town electing him is not liable in trespass for his acts.—*Hunt v. Eden*, 75 Vt. 119.

Power After Term Expires.—A collector may, after his term of office expires, enforce the collection of any tax then in his hands for collection. S. 510.

Compensation, Annual Settlements.—Towns may make such agreement with the collector in respect to his fees and commissions, as they judge advantageous to the town. S. 3055.

He is required to settle annually his accounts with the town auditors on or before the first Tuesday of March; otherwise he is ineligible for re-election for the year ensuing. S. 3062.

A town may sell the office of first constable at auction in open town meeting to the highest bidder, elect the purchaser to the office and collect from him a promissory note given by him for the price.—*Thetford v. Hubbard*, 22 Vt. 440.

To enable a constable to recover against his town on an agreement under the statute, the breach alleged being neglect of the town to give plaintiff the collection of certain taxes, the declaration must fully and explicitly set forth a contract duly made by the town with plaintiff to give him the collection of such taxes.—*Cameron v. Walden*, 32 Vt. 323.

The collector cannot maintain an action against a town where the selectmen have caused the taxes to be collected through some other agent, for what he would have realized from their collection, although by law it was his duty to collect them.—*Woodward v. Rutland*, 61 Vt. 316.

Liability, General.—Any collector who unlawfully neglects to collect and pay over a tax delivered to him, shall be accountable for such tax, or the arrearages thereof, to the treasurer, selectmen, trustees, committees or other persons authorized to receive the same, and they may cite him to appear before a justice residing in an adjoining town to show cause why an extent should not be issued against him for such arrearages and the costs of such proceedings, which citation shall be served at least six days before the time appointed for hearing the same. S. 517.

A misdescription of the year upon the grand list on which a tax was alleged to have been laid in a petition for an extent against a delinquent collector, does not invalidate the extent granted thereon, and a similar mistake in the extent would not invalidate it.—*Clark v. Lathrop*, 33 Vt. 140.

Where proceedings have been taken to procure an extent against a delinquent tax collector, an action would not lie on his official bond. The remedies are elective not concurrent; a prosecution of one debars the other.—*Hartland v. Hackett*, 57 Vt. 92.

Liability; Appeal from Justice's Decision.—The collector, or the person citing him before such justice, may appeal from the judgment of the justice to the next term of the county court in the same county, if the appeal is claimed within two hours after the rendition of such judgment, the party appealing giving security by way of recognizance

to the opposite party at the time of taking such appeal that the appellant will prosecute his appeal to effect and pay the costs of prosecution. S. 519.

Mistake in Tax-bill, Not Liable for.—No collector shall be liable to an action which may accrue in consequence of mistake, mischarge, or overcharge in the tax-bill committed to him for collection. S. 545.

Parol evidence is admissible to show on what list and what vote of a town a tax is assessed and to impeach or contradict the certificate of the selectmen attached to a rate-bill, in any respect in which the same is erroneous.—*Read v. Jamaica*, 40 Vt. 629.

Indemnification.—A collector shall be indemnified by the town, village, or other municipality, by which he is appointed, for the damage which he suffers by the illegality of the imposition, assessment, or apportionment of a tax, or the illegality or informality in the tax-bill, warrant, or other precept, furnished him for the collection of said tax, and such damage may be recovered by him, of such town, village, or municipality. S. 546.

A highway surveyor need not look beyond the tax-bill and warrant placed in his hands by the selectmen to ascertain the extent of his district, and if he has to pay damages to a landowner in trespass for working on land described in the warrant and tax-bill, he will be indemnified by the town.—*Ladd v. Waterbury*, 34 Vt. 426.

A school district may raise a tax to pay the expense of defending a collector who has rendered himself liable in damages for attempting to collect an illegal tax-bill. The district is not exonerated from liability by the collector's taking a bond of indemnity from a special committee.—*Johnson v. Colburn*, 36 Vt. 694.

A tax collector who had received an invalid tax-bill advanced and paid into the town treasury the amount of the bill. When the illegality of the tax-bill was discovered the selectmen instructed the collector not to enforce payment of it, and promised to repay him what he did not collect by voluntary payment. *Held*, that the promise by the selectmen bound the town and that the payment made by the collector was not under the ban of a voluntary payment.—*Miles v. Albany*, 59 Vt. 79.

Death or Removal; Proceedings.—When a collector removes out of the town, village, or other municipality for which he was appointed, or dies, or is placed under guardianship, while a tax-bill committed to him is uncollected, in whole or in part, he shall immediately, and his executor, administrator or guardian shall, on demand, lodge with the clerk of the town, village or other municipality, such tax-bill and the moneys collected and not paid over as required by law. S. 527.

The successor of a collector of taxes who dies without completing the collection of a tax-bill may complete the collection by virtue of the same warrant issued to the former collector.—*Wilson v. Seavey*, 38 Vt. 221.

The administrator of a tax collector may enter and prosecute to final judgment a suit begun by the collector in his lifetime for the collection of a tax by trustee process under R. L., SS. 407, 408.—*Smith v. Blair*, 67 Vt. 658.

Noncompliance, Penalty for.—A collector removed, or the executor, administrator or guardian of a collector, who neglects the duties re-

quired in the preceding section, shall be liable for the whole amount of the tax-bill therein mentioned, to the town, village, or other municipality, and shall have no authority to collect or receive such unpaid taxes. S. 528.

Successor to Complete Collection.—If a collector has commenced proceedings for the collection of taxes and dies, removes from the state, or becomes otherwise incapable of completing the business, or if he has in his hands uncollected taxes, any successor in such office may complete such proceedings or collect such taxes. An unpaid tax not collected by a former collector may be enforced under the same warrant by any successor in the same office. S. 529.

The omission of the name of the constable or collector from a warrant does not render it void, the power to collect the taxes being incident to the office. A constable may execute a warrant on a rate-bill though issued before he was appointed. It is sufficient that he is such at the time he executes it.—*Wilson v. Seavey*, 38 Vt. 221.

A collector must prove his authority to act as such affirmatively. A person appointed by the selectmen to fill a vacancy in that office should be sworn before entering upon its duties.—*Houston v. Russell*, 52 Vt. 110.

Disability.—When a collector of town taxes is unable from sickness or otherwise, to discharge his duties, and taxes are uncollected on a tax-bill held by him, the selectmen, at the request of such collector, shall certify such disability on the warrant for the collection of such taxes, and in such certificate authorize and direct the then collector, or in default of any such collector, shall appoint a person to collect and pay over such taxes; and the person so authorized shall have the same power and be subject to the same duties and penalties as the collector to whom said tax-bill was originally committed. S. 530.

The removal of a collector of taxes from the town created a vacancy in the office which the selectmen had authority to fill by appointment.—*Clement v. Hale*, 47 Vt. 680.

Vacancy, Duties in Case of.—On demand of the selectmen, trustees, prudential committee or executive officers, the collector whose office becomes vacant, shall lodge with the treasurer of the corporation the tax-bills and tax warrants issued to him and a list of the names of all persons included in such tax-bills against whom there are unpaid taxes and the amount due from each. If such collector wilfully fails to comply with any of the provisions of this section, he shall be imprisoned in the state prison not more than five years, or be fined not more than one thousand dollars, or both. S. 534.

The collector of the corporation or the collector appointed or elected to fill a vacancy, shall receive from the treasurer of the corporation the tax warrants and tax-bills deposited with him under the preceding section and complete the collection as though the same had been originally committed to him. S. 535.

Collector, Delinquent, Liable to Town.—A delinquent collector shall be accountable to the town for the amount of the delinquency with the costs and charges that may accrue to such town by reason thereof. S. 515.

In a suit upon a collector's bond for not paying over taxes collected, it is no defense that the grand list was invalid.—*Montpelier v. Clarke*, 67 Vt. 479.

The surety is liable for the non-payment of taxes collected even though the levy was invalid.—*Pawlet v. Kelly*, 69 Vt. 401; *Tunbridge v. Smith*, 48 Vt. 648.

Extent to Issue, When.—When a collector is delinquent in paying over a tax entrusted to him to collect, and is cited before a justice as provided by law to show cause why an extent should not be issued against him for the arrearages of the tax so neglected by him to be collected and paid, if it appears to the justice that such collector has not performed his duty agreeably to his warrant, for the collection of such tax, he shall, unless such collector appeals from his decision, issue an extent, directed as writs of attachment are directed, commanding the officer serving such extent to collect such arrearages and costs of the goods, chattels, or estate of such collector. S. 518.

Prior demand of payment need not be averred in a suit on a constable's or collector's bond, nor that a proceeding has been begun to procure an extent against the collector himself, the suit on the bond being a cumulative remedy.—*Middlebury v. Nixon*, 1 Vt. 232.

Misdescription of the year upon the grand list, on which a certain tax was alleged to have been laid in a petition from the selectmen to a justice of the peace for an extent against a delinquent collector, does not invalidate the extent.—*Clark v. Lathrop*, 33 Vt. 140.

The supreme court will not release on *habeas corpus* a delinquent collector imprisoned in the county jail on an extent issued by a justice of the peace adjudging him to be in default. The law authorizing a justice to issue an extent declared constitutional.—*In Re Hackett*, 53 Vt. 354.

The two remedies against a delinquent tax-collector are concurrent—a town procured an extent against collector and caused him to be imprisoned. *Held*, that an action could not be maintained on the collector's bond—a prosecution of one remedy is a bar to the other. An extent is not returnable—no return is required in case of sale.—*Hartland v. Hackett*, 57 Vt. 92.

The statute of exemptions does not exempt certain property of a delinquent collector from attachment and sale under an extent against him. Extents and executions distinguished.—*Hackett v. Amsden*, 57 Vt. 432.

A written petition is not necessary, under V. S. 517, for an extent against a delinquent collector.—*Mt. Holly v. French*, 75 Vt. 1.

Collector Appealing Files Bond.—When a collector appeals he shall within forty-eight hours after the rendition of the judgment and appeal, file with the clerk of the county court to which such appeal is taken, a bond to the state or municipal corporation to whose treasury such taxes are payable, with sureties to be approved by such clerk, in a sum double the amount of arrearages of taxes as adjudged by the justice, conditioned for the payment of such sum of arrearages of taxes and costs as the county court may finally adjudge to be paid by such collector. If the collector fails to give and file such bond the justice shall issue an extent as though no appeal had been taken. S. 520.

Power of County Court over.—The county court shall have authority upon such appeal to try and determine the question whether the extent should issue, and to issue the same. S. 521.

Proceedings Under.— When the officer serving such extent distrains the property of the collector, the mode of notifying, advertising and selling, and the time of redemption shall be the same as in cases of collectors delinquent in the collection of state taxes; and for want of goods, chattels or estate of such collector, he shall be committed to jail. S. 522.

An extent is not returnable, all the officer's doings under it may be proven by parol. Boards and posts in a corn-barn intended to be used to build a fence are not subject to levy as personal property.—*Hackett v. Amsden*, 57 Vt. 432.

Collector's Property Distrained.— Whenever a sheriff, high bailiff or other officer, having for service an extent issued against a delinquent collector of taxes, shall distrain any class of property which may by law be attached on mesne process by leaving a copy in the town clerk's office, such officer may leave a copy of such extent, with a list of the property so distrained endorsed thereon with his return, in the town clerk's office of the town in which such property is situated, and it shall give to such officer the same right to hold such property as if attached on mesne process and taken into the actual custody of such officer. Such officer within forty-eight hours after lodging such copy in the town clerk's office shall deliver to such delinquent collector, or leave at his last and usual place of abode in this state, a like true and attested copy of such extent, with a list of the property distrained endorsed thereon, as is now required in the like service of writs of attachment. S. 523.

Excess Paid to Collector.— If a corporation realizes out of the goods, chattels or estate of such delinquent collector only part satisfaction upon extents against him, it shall on demand pay over to such collector all sums realized from such tax-bills in excess of the just balance due said corporation from said collector. S. 536.

Imprisonment; Liberty of Jail Yard.— When a collector or other person is confined in jail on an extent issued against him, for delinquencies in paying over a tax entrusted to him to collect, he may make application by petition, to the county court, at any session thereof, in the county in which such person is confined, or to any judge of the supreme court, praying that he may be admitted to the poor debtor's oath, or to the liberties of the jail yard. S. 524.

Such petition shall be served in the same manner as a similar petition from a person confined in a jail on a close jail execution and said court or judge shall have the same power to grant relief as in case of such last mentioned petition. S. 525.

Imprisoned; When Discharged.—If a collector has been committed to jail on any extent and the corporation shall realize on any of the tax-bills lodged with the treasurer under this chapter the full amount due from said collector on all such extents, the said collector may be discharged from such imprisonment by the order of a judge of the supreme court upon proof of the foregoing facts, on notice to the treasurer of said corporation. S. 537.

State Taxes; Collector Delinquent.—When a collector who is delinquent in the collection and payment of state taxes dies, the state treasurer may give notice to one of the selectmen of the town of the amount of such taxes in arrears, and request payment thereof; and if the same is not paid within thirty days thereafter, he may issue an extent against the goods and chattels of the inhabitants of said town, and the same shall be collected as heretofore provided in this chapter in case of an extent against the inhabitants of a town. S. 531.

Application of Tax.—When a collector of taxes makes a payment on account of taxes he shall state the tax on which the same shall be applied; if he fails to do so, the treasurer to whom the same is paid shall immediately notify the bondsmen of such collector of the fact that no application of the payment has been made, and unless the collector shall direct an application within ten days, the application made by the treasurer shall be conclusive. S. 538.

Where a collector uses the taxes collected in one year in paying up arrearages of previous years without the knowledge of the town authorities, his sureties are liable for the amount so applied.—*Carpenter v. Corinth*, 62 Vt. 111.

Auditor, State, Receipt to.—When the general assembly imposes a state or county tax, the state or county treasurer shall seasonably issue his warrant directed to the first constable or collector of taxes, and transmit the same to the selectmen of each town, who shall take a receipt for the same of such collector; when a collector pays money to the state treasurer on state taxes, he shall take a duplicate receipt therefor, and within ten days forward one to the state auditor. S. 468.

The omission of the name of the constable or collector from a warrant does not render it void. The selectmen should annex a warrant to a rate-bill of a state school tax as in case of a tax voted by the town.—*Wilson v. Seavey*, 38 Vt. 221.

Authority Delegated.—A collector having an unpaid tax against a person who has removed from or resides out of the town in which such collector resides, may make an abstract containing the person's name, his grand list and the tax against him, and append thereto a copy of his warrant certified by him, and deliver it to the collector of any town in which such person is or resides; and such collector may collect the tax as the original collector might have done, and his powers, liabilities and fees therein, shall be the same as if the tax and warrant had been

originally committed to him, but he shall be paid only for actual travel; and if he arrests such person he shall commit him to the jail of the county in which the collector making the arrest resides. S. 503.

Collection Enjoined.—Whenever the collection of taxes is restrained by injunction, the time such injunction is in force shall not be considered as a part of the time within which the collector is required to execute his warrant. S. 526.

Demand by Letter.—When a collector has for collection a tax against a person residing out of the town in which the collector resides, he may notify such person thereof by a letter containing a statement of the amount of such tax, and of the time and place when and where the collector will receive payment thereof. The time appointed for payment shall not be less than twenty nor more than forty days from the time when the letter is deposited in the post office.

If the person so notified fails to pay such tax agreeably to notice, the collector may collect the same of such person, and shall be entitled to ten cents per mile for necessary travel, to be collected with such tax; such travel shall be reckoned the same as in the service of process by sheriffs. SS. 504, 505.

Distrain; Exemptions.—At the expiration of the time of notice, and sooner in case of a person whom he has just reason to believe is about to remove from town, the collector may distrain the goods, chattels, and capital stock in a corporation, of a person whose tax is not paid, excepting therefrom in case of taxes assessed on real estate, apparel, bedding, provisions not exceeding twenty-five dollars in value, household furniture necessary for supporting life, and one sewing machine kept for use. S. 473.

A collector of a school district, distraining property to satisfy a tax, need not sell the same in his district; if sold in the town it is sufficient. Beasts of plow are not exempt from distraint for taxes.—*Sherwin v. Bugbee*, 16 Vt. 439.

To constitute a distraint of personal property, a collector must either himself or by his servant take and maintain actual custody of the property. *Held*, that a collector could not maintain trespass against a farmer for consuming grain that he had left in the farmer's custody telling him he had distrained the grain to satisfy a tax-bill and requesting him to keep it for him, which the farmer refused to do.—*Dodge v. Way*, 18 Vt. 457.

If a collector, after demanding payment of a tax-bill, performs travel for the purpose of distraining property, he is entitled to claim traveling fees, and a tender of the tax and interest is insufficient, if the collector claims his traveling fees.—*Joslyn v. Tracy*, 19 Vt. 569.

A chattel belonging to A. cannot be levied on for a tax due by B., although it formerly belonged to B. and still remains in B.'s possession.—*Daniels v. Nelson*, 41 Vt. 161; *Hackett v. Amsden*, 56 Vt. 201.

The collector must show a legal tax, a legal list, and that his authority was legal. Where the listers used a form for the annual list, appraised the real estate and used the form for quadrennial appraisal, the list *held* invalid.—*Cloze Spring Iron Works v. Cone*, 56 Vt. 603; *Rowell v. Horton*, 57 Vt. 31.

Bank stock is not subject to seizure and sale under a tax warrant. A voluntary payment cannot be recovered.—*Sowles v. Soule*, 59 Vt. 131.

Leased property cannot be distrained for taxes.—*Bartlett v. Wilson*, 60 Vt. 644.

Distraint by Copy.—Personal estate which may be attached on a writ by leaving a copy in the town clerk's office, or by leaving a copy with the clerk or other officer of a corporation, may be distrained for taxes by leaving in such town clerk's office, or with the clerk or other officer of such corporation, a copy of the warrant with the collector's return thereon, giving a description of the property distrained, and the character and amount of the tax; if stock in a corporation is sold by a collector to satisfy a tax, the clerk or other officer whose duty it is to make transfers of stock on the books of the corporation, shall transfer the stock so sold to the purchaser on the books of the corporation, and give the purchaser a certificate of stock. S. 474.

Distress Sold.—If a tax with costs and charges is not paid within four days after distress is made, the collector may sell the property at public auction, after posting notice thereof at least six days, in a public place in the town where the property was taken; and after deducting the tax, and his charges, shall return the balance realized from the sale on demand to the person whose property was distrained, with an account of the tax and his charges. S. 475.

The choice of place to sell should be made by the officer to secure the greatest publicity; the object to be obtained rather than the manner of attaining it, is the principal thing.—*Austin v. Soule*, 36 Vt. 645.

A collector is not restricted to the exact time fixed by statute, but cannot sell on less notice. He must advertise and sell within a reasonable time after the four and six days, respectively, have expired.—*Clemons v. Lewis*, 36 Vt. 673.

A collector may adjourn a sale and in that regard his powers are identical with those of officers having an execution for collection.—*Spear v. Tilson*, 24 Vt. 420.

A tax collector may post the property distrained for sale before the four days expire, from the time of taking the property, provided the day fixed for the sale is six days from the expiration of the four days allowed the owner to redeem.—*Harriman v. School District*, 35 Vt. 311.

Property seized on 21st February, advertised on 25th February, and sold on 3d March, *held*, to be in compliance with the statute.—*Alger v. Curry*, 40 Vt. 437.

An adjournment of the sale of property must be to a definite time, and no legal sale could be made before the hour set for the sale on an adjournment.—*Buzzell v. Johnson*, 54 Vt. 90.

A tax collector distrained and sold bank stock belonging to a resident of the state, under No. 17, Acts 1892. The act *held* to be in conflict with art. 4, § 2, of the Federal constitution. Cases reviewed.—*Sprague v. Fletcher*, 69 Vt. 69. In order to get the benefit of this case, the taxpayer must have answered the interrogatories.—*Hughes v. Kelley*, *Ibid.* 444.

Imprisonment of Delinquent.—For want of personal estate which may be distrained, the collector may arrest a delinquent and commit him to jail until he pays the tax and cost; and shall leave with the jailer an attested copy of his warrant with his doings certified thereon. S. 476.

The collector must certify all the facts on his warrant necessary to justify the arrest of the delinquent. In an action against him for false imprison-

ment, the collector cannot supply the omission of these facts by parol evidence.—*Henry v. Tilson*, 19 Vt. 447.

The assessment of a tax does not create a debt that can be enforced by suit or on which a promise to pay interest can be implied. If a collector arrests a taxpayer for the purpose of enforcing payment of interest merely, the arrest will be illegal.—*Shaw v. Peckett*, 26 Vt. 482.

To avoid arrest of his body a delinquent must make tender to the collector of some specific property to satisfy the warrant. A warrant held insufficient for vagueness; the words "to proceed with him or them as the law directs," not specific enough. The doings of the collector must be certified on the warrant in detail.—*Flint v. Whitney*, 28 Vt. 680.

After committing a delinquent to jail, the officer may have a reasonable time, with due diligence and dispatch, to make a copy of his warrant and certificate and give the same to the jailor—30 minutes ought to have been sufficient—in this case 15 hours was taken, to perform the duty.—*Boardman v. Goldsmith*, 48 Vt. 403.

An arrest upon a tax warrant is not rendered illegal by the fact that the per cent assessment raises a sum slightly in excess of the gross sum voted. An illegal fee exacted by the officer does not render him a trespasser *ab initio*.—*Meserve v. Folsom*, 62 Vt. 504.

Lands Advertised.—The town collector shall forthwith, after the fifteenth day of January, advertise the lands for sale in a newspaper; such publication shall be made three weeks successively, the last publication to be at least ten days before the day of sale.

The advertisement shall contain a description of each piece or parcel of land to be sold, giving the original proprietor's name, and that of the owner, if known, the number and range, or number and division thereof, or in such other definite manner that each piece and parcel thereof may be certainly known. The advertisement shall be substantially in the form given in the statute.

The advertisement shall be recorded in the town clerk's office, and the clerk shall certify whether the same has been published as required by law. SS. 495, 496, 497.

If, upon a sale of land for taxes, assessed by a town the town clerk in his record of the proceedings neglects to certify that the collector's advertisement was published as required by law, the sale is invalid and no title passes to the purchaser by the collector's deed. The town clerk has no authority to amend his record in this respect after the time for redeeming the land has expired.—*Judevine v. Jackson*, 18 Vt. 470.

Lands, List Left with Town Clerk.—The collector, within thirty days from the expiration of the time for redemption, shall deposit with the town clerk for record, a list of the lands which have not been redeemed. S. 490.

Lands, List Recorded.—The town collector shall, before advertising such lands for sale, leave said lists in the town clerk's office for record, and they shall be recorded with the certificates thereon by the clerk. S. 493.

Lands Sold; Collector Accountable.—The town collector shall sell so much of said lands as is necessary to pay such unpaid taxes thereon, with the costs, and such sale shall be made between the twenty-fifth day

of February and the first day of June following; the town collector shall be accountable to each collector depositing his lists with him for the amount collected on such list as soon as collected. S. 498.

A tax collector cannot himself or by agent purchase real estate at an official sale thereof made by himself to satisfy unpaid taxes. He acquires no title even where the owner fails to redeem.—*Chandler v. Moulton*, 33 Vt. 245.

Lands Sold; Redemption.—If the owner of such lands, his representatives, or assigns, within one year from the day of sale, pays or tenders to the collector who made the sale, or in case of his death or removal from the town where the land lies, to the town clerk of such town, the sum for which the land was sold with twelve per cent. interest thereon, no deed of the land shall be made to the purchaser, but the money paid or tendered by the owner to the collector or town clerk shall be paid over to said purchaser on demand. S. 488.

List Recorded.—The town collector who sells such lands shall make a list thereof certified by him, designating the time when, the person to whom, and the sum for which each piece of land was sold, and leave the same for record in the office of the town clerk within thirty days from the day of sale, who shall record the same within ten days thereafter. S. 499.

Land Taken for Taxes.—When the collector cannot find personal estate of a tax payer living and a resident of the town, against whom he has a tax assessed in such town, his warrant may be extended on any land in the state owned by such person; and the collector shall advertise the land for sale at public auction in the town where it lies, three weeks successively, in a newspaper circulating in the vicinity, the last publication to be at least ten days before sale, and also post a notice thereof in some public place in the town; if the tax, with costs, is not paid before the day of sale, so much of the land may be sold as is necessary to pay such tax and costs. S. 487.

The vendee in a tax sale, conducted with due formality, who in good faith and in reliance on his title enters and occupies the land, but never receives a deed from the collector, has such an equitable interest in the premises that he may maintain a suit to restrain vexatious suits.—*Langdon v. Templeton*, 61 Vt. 119.

Non-residents' Lands; How Sold.—No person other than the collector of town taxes shall sell for taxes the lands of persons not residing in the town in which the same are assessed. Other collectors shall deposit with such town collectors, on or before the first day of January, annually, a list of the lands of non-residents upon which taxes are unpaid on their tax-bills, stating therein the amount of taxes due on each tract or parcel of land with their certificates thereon that the same are correct lists. The town collector shall certify on each list the time when he received the same, and they shall remain in his hands until the fifteenth day of January before said lands are advertised for sale.

Lands of non-residents shall not be advertised nor sold for taxes unless a list of the same has been so deposited, and remained in possession of the town collector as aforesaid. S. 492.

While the rule is that in sales of land for taxes the law must be strictly followed, it must receive a reasonable construction, and where no particular method is pointed out any mode which effects the desired object may be followed; the presumption is that the committee selling took the oath as required by law; by the finding of the judges it appears that the account was properly verified.—*Kane's Administrator v. Garfield*, 60 Vt. 79.

Property of an Estate Liable for Taxes.—When the estate of a deceased person is set in the list to such person's estate without naming the executor or administrator, if the executor or administrator does not pay the taxes assessed on such estate, any personal property of the estate may be taken and sold for the payment of such taxes with costs, upon the same notice and demand of such executor or administrator, and in the same manner as provided by law for the collection of taxes. Real estate belonging to such estate shall be holden and may be sold as provided in section 478. S. 479.

Real Estate Held for Tax.—Real estate subject to taxation set in the grand list shall be held for the payment of taxes legally assessed thereon, and may be sold for their non-payment, although the ownership of the lands changes after the assessment is made. S. 478.

A tax sale is illegal if not made in strict compliance with the statute. Nothing is presumed in favor of proceedings *in invitum*. When a collector failed to post a notice in some public place ten days before the sale and sold the land for a larger sum than he was entitled to, the sale was fatally defective.—*Cummings v. Holt*, 56 Vt. 384.

Reversionary Interest May Be Sold.—The reversionary interest of the owner of property subject to lease may be distrained by a collector for taxes, by delivering to the lessor and lessee of such property a copy of his warrant with his return thereon, giving a description of the taxes and of the property and the lessor's interest; and the collector may sell such interest in the same manner as is required by law for the sale of property for taxes when it is not under lease. S. 502.

Tax-bill, Receipt of; Notice to Tax-payer.—The collector shall indorse on a tax-bill the time when it was received, and immediately give six days' notice to each resident tax-payer of the amount of his tax and where and when it is to be paid. S. 472.

An averment that the taxes in the rate-bill "were assessed upon the lists of the persons named for the year 1840," held to be sufficient; also that plaintiff and two others "were jointly and legally assessed the sum of \$2.07 being three cents on the dollar of the list of said Downer and others for the year 1840."

No notice of the time and place of payment is required to be given by a collector when the taxpayer on demand refuses to pay unless compelled.—*Downer v. Woodbury*, 19 Vt. 329.

Where a collector calls upon one legally assessed in a school district to pay a tax, and the taxpayer absolutely refuses to pay the tax, after such refusal,

the collector is not required to give further time and specify time and place when and where he will receive the tax, but may at once levy on property of the one refusing to pay.—*Wheelock v. Archer*, 26 Vt. 380.

Neglect to comply with the provision of the statute requiring the warrant for collection of a school tax to specify a limited time within which the tax is collected is not a defect of which a person taxed can take advantage.—*Walker v. Miner*, 32 Vt., 769.

The omission to enter upon the warrant the true day and year when it was received is not sufficient to invalidate his proceedings under it. The true time may be shown by other evidence.—*Goodwin v. Perkins*, 39 Vt. 598.

The burden of proof is on the taxpayer to show where his domicile was on April 1st. An absolute refusal to pay a tax justifies the collector in proceeding to collect the tax without giving notice.—*Hurlburt v. Green*, 42 Vt. 316.

Tax-bill; Time Limit for Collection.—The collector may, within six years from the time of receiving a tax-bill, collect a tax in any place in the state and execute his warrant wherever he finds the property or person of a delinquent; if a person against whom the collector has a tax is absent from the state when the tax-bill is received, or removes therefrom within one year thereafter, and has no property in the state which can be distrained for taxes, the collector may collect the tax within six years from the time he returns to the state or has known property therein liable to distress. S. 477.

The statute of R. L., §§ 407-8, gave the collector the right to collect a tax at any place in the state at any time within three years after receiving the tax-bill.—*Wheeler v. Wilson*, 57 Vt. 157.

In doubling the amount of a tax the listers must find specific property, appraise it and double the sum ascertained.—*Rowell v. Horton*, 58 Vt. 1.

Tax-payers, Delinquent, to Report.—The collector of taxes or other officers whose duty it shall be to collect said tax or taxes shall annually on or before the fifteenth day of February in each year make a list of said delinquent tax-payers and deliver the same to the city, town or incorporated village clerk as the case may be, to be used by the board of civil authority at the annual March meeting, to determine who are legal voters in said meeting. S. 2971.

Under the statute of 1869 every male citizen of 21 years, subject to taxation in a town and resident therein, is a voter in the town meeting of said town; and this is so, although at the annual assessment next preceding he was a resident of another town and was assessed in both towns.—*Wilson v. Wheeler*, 55 Vt. 446; *State ex rel. Cowley v. O'Hearn*, 58 Vt. 718.

Trustee Process.—A collector who has an unpaid tax against a person may in his name commence a trustee suit upon such tax against such delinquent, and the same proceedings shall be thereupon had, and the trustee shall be chargeable as in other trustee suits, except that the suit may be maintained although the tax is less than ten dollars, and a person may be adjudged trustee who has less than ten dollars in value of the goods, effects or credits of the defendant in his hands.

The plaintiff shall not take judgment in such case for a greater sum, including costs, than the amount of the judgment against the trustee,

and the sum realized therefrom, after paying costs, shall be applied on the tax, and the collection of any balance shall not be thereby affected.

A justice shall not be disqualified to try such suit by being a taxpayer in the place where such tax is voted. SS. 506, 508, 509.

In an action by a collector to collect a tax, neither the fact that defendant's name stood in the list of the town in favor of which the tax was claimed, nor the decision of the listers in setting defendant in said list, is any evidence on the question of defendant's residence.—*Gregory v. Bugbee*, 42 Vt. 480.

An action by a collector against a taxpayer is in *assumpsit*. The statute prescribes the requisites of a good declaration and these are sufficient.—*Wheeler v. Wilson*, 57 Vt. 157.

Unorganized Towns and Gores.—Collectors of taxes for unorganized towns and gores are appointed by the governor, give bond to the state for the faithful performance of their duties, and have, in general, the same powers and duties as collectors of town and state taxes. SS. 385, 386; 539-544.

A collector's successor may act under the warrant and rate-bill issued to his predecessor.—*Wilson v. Seavey*, 38 Vt. 221.

A school district collector in an action against a constable who had collected but not paid over taxes collected. *Held*, that plaintiff must show he was qualified to act as collector in order to maintain suit, and it not appearing that he had been duly sworn, he was not authorized to bring suit.—*Houston v. Russell*, 52 Vt. 110.

The amount of the collector's bond is determined by the amount of the tax he has to collect.—*Kane's Administrator v. Garfield*, 60 Vt. 79.

Unredeemed Lands Conveyed.—If the land is not redeemed, the town collector shall execute a conveyance thereof to the purchaser, and such conveyance shall give the purchaser a valid title to such land against all persons. SS. 501, 489.

A recital in a collector's tax deed that "he has in all things pursued the directions of the statute" is not *prima facie* evidence of such fact, but a person claiming under it must show that every substantial requisite of the law has been complied with. No presumption exists in favor of such a deed from its antiquity—rather the contrary. If the warrant to the collector misrecited the time at which the statute was enacted by virtue of which the tax was levied, the warrant is void and the deed of land sold under it conveys no title.—*May v. Wright*, 17 Vt. 97.

The measure of damages in an action against a town by the purchaser of land sold by a constable for taxes, to recover for the constable's negligence by reason of which no valid title was conveyed by his deed, is the amount of money paid by the purchaser for the deed with interest.—*Saulters v. Victory*, 35 Vt. 351.

The purchaser of land at a tax sale acquires no title without a deed from the collector.—*Davenport v. Newton*, 71 Vt. 11.

Warrant, Copy Recorded.—A town collector, before advertising lands of non-residents for sale on a tax originally committed to him, shall leave a copy of the warrant, and so much of the tax-bill as relates to said tax, certified by him to be true copies, with the town clerk for record, who shall record the same, and whose certificate of such record shall be *prima facie* evidence of such warrant and tax-bill. S. 494.

CONSTABLES.

Election; Oath; Bond.—Every town chooses annually at the annual town meeting a first constable, and, if necessary, a second constable. They are sworn, and are required before entering on their official duties to give bond to the selectmen for the faithful performance of the same. A selectman is ineligible to the office of first constable. SS. 2980, 2989, 2994, 3026.

Vacancy Filled.—The town, at a special meeting may fill a vacancy in any town office.

The selectmen may fill a vacancy in any town office until an election is had, and a record of such appointment shall be made in the town clerk's office. SS. 2987, 2988.

Constables; Special.—The selectmen may appoint special constables when necessary to preserve the peace or for the security of life and property. Such constables shall be sworn before entering upon their duties, shall have, for police purposes, the powers and be subject to the liabilities of regular constables, and shall hold office for one year unless sooner discharged by the selectmen.

The appointment, discharge and oath of such constables shall be in writing and recorded in the town clerk's office, and a certified copy of such record shall be evidence thereof in the courts. SS. 3024, 3025.

Arrest Without Warrant; Fast Driving.—A constable may arrest without a warrant a person driving faster than a walk on a bridge more than eighty feet high, on the day when the offense is committed, if he has reason to believe and does believe the person so arrested will escape from the jurisdiction unless arrested without warrant. SS. 3528, 3529.

An officer may arrest without a warrant a person whom he has reasonable cause to believe has committed a felony in another state.—*State v. Taylor*, 70 Vt. 1.

Intoxicated Persons.—A constable may arrest without warrant, any person found in his town in such a state of intoxication as to disturb the public or domestic peace and tranquillity, and may retain him in custody at the expense of the state, in any place within the county in the discretion of such officer, until in his opinion the person so detained is capable of testifying properly in court, and he shall then bring him before some justice of the county.

The officer, immediately after the arrest shall give notice thereof to a grand juror of the town in which such intoxicated person is so found, and such grand juror shall prosecute such intoxicated person. SS. 4481, 4482.

Religious Meetings; Disturbers.—A constable being present at a religious meeting, may without warrant upon view arrest a person making disturbance of such meeting, and detain him in custody during

the time of such meeting or until a trial of such offense is had, and may command assistance in the execution of the aforesaid duties. S. 5050.

Collector of Taxes.—First constables shall be collectors of state, county and town taxes in their respective towns, when no collector of taxes is elected at the annual meeting, and shall pay over the taxes collected agreeably to the warrants for their collection. S. 3054.

Counterfeits; Seizure.—A justice, sheriff, deputy sheriff, high bailiff, constable or grand juror within his jurisdiction, shall seize forged, false or counterfeited bank bills or notes, or coin and the instruments or implements made or kept for the purpose of making, forging, changing, or counterfeiting gold or silver coin, bank bills or notes, and deliver the same as soon as may be to the state's attorney of such county, with the names of the persons from whom the same are taken. S. 4987.

Cruelty to Animals; Prosecutions.—Constables are required to prosecute violations of the laws concerning cruelty to animals, which come to their notice or knowledge. S. 5001.

Dogs, Unlicensed; Complaints.—A constable to whom a warrant for killing dogs has been issued shall make the complaints therein required to be made, to the town grand jurors, and make the return therein directed within sixty days from its date. SS. 4833, 4834.

Elections, Polling-places Prepared.—The first constable causes the polling places, as determined by the board of civil authority, to be provided with a sufficient number of voting-booths in which voters may conveniently mark their ballots; one such booth for each fifty voters or fraction of fifty exceeding twenty-five voters qualified to vote at each polling-place. It is also his duty to furnish suitable ballot-boxes for both state and local elections. At state elections there shall be one box for votes for state and county officers and representatives to congress; one box for representative to the general assembly; one box for justices, and one box for electors. SS. 113-115.

Presiding Officer.—The presiding officer in general elections in towns, shall be the first constable. A constable is disqualified from presiding, if he is knowingly a candidate for representative to the general assembly, or for senator, assistant judge of the county court, judge of probate, sheriff, or state's attorney. S. 118.

Intoxicating Liquors.—The town constables are charged with certain duties in the enforcement of the laws concerning intoxicating liquors contained in the act No. 90 of the Public Laws of 1902, establishing the same, to which the reader is referred.

Justice's Court Officer.—The town constable is the proper officer of a justice court, and in his absence, or whenever at such court a jury is

demand, and the constable is interested in the event of the cause or matter at issue, or is related to either party within the fourth degree of consanguinity or affinity, or when the attorney or prosecuting officer requests it, the justice shall appoint some other officer. S. 1296.

Process Service.—A constable may, within the town for which he is elected, serve any process which a sheriff may serve; and may, when the town in which he is elected votes to give him such jurisdiction, serve any process within the state returnable to any court. A person appointed to fill a vacancy in the office of constable shall have the same jurisdiction that said constable had.

The constable of any town adjoining the waters of Lake Champlain, may serve process on the waters of the lake included in the county to which the town belongs. In the service of process, constables have the same powers, and are subject to the same liabilities and penalties as sheriffs. SS. 1070, 1071, 1072.

Disqualifications.—No officer shall serve a writ drawn on a note originally payable to himself, and sued in the name of an indorsee, nor where he, or a private corporation of which he is a member, is a party or interested. But he shall not be disqualified from serving process for or against a town or county by reason only of being a tax-payer therein; nor for or against a railroad corporation by reason of being a tax-payer in a town owning stock in such corporation; nor for or against a savings bank or savings institution by reason of being a corporator or officer thereof. S. 1073.

Riots, Disperse.—A constable having notice or knowledge of the unlawful, tumultuous or riotous assemblage of three or more persons within his jurisdiction shall, among or as near as he can safely come to such rioters, command them in the name of the state of Vermont immediately and peaceably to disperse, and if three or more of such rioters after such command do not disperse, such officer or magistrate and such other person as he commands to assist him, shall apprehend and forthwith take them before a justice. S. 5036.

Officers and persons assisting them in lawfully dispersing or apprehending such rioters, shall not be liable in a civil or criminal proceeding, if a rioter by reason of his resistance is killed or injured. S. 5039.

Town Meetings; Notices; Candidates.—The constable is charged with the duty of posting notices of town meetings, and meetings for elections. These notices are required to be posted in three public places in the town, not less than five nor more than fifteen days before the day of such meeting. SS. 111, 2973.

The constable also posts lists of candidates, as furnished by the county clerk, at the polling-places and four other public and conspicu-

ous places in the town, at least six days before the election at which such candidates are to be voted for. S. 94.

Truant Officers.—On failure to appoint truant officers, constables may act as such officers. S. 710.

Vermont Industrial School, Commitments.—Any constable may serve a warrant of commitment to the Vermont Industrial School as though such school was situated in the town where he is constable. S. 5222.

DOGS.

See "Town Clerk."

ENGINEERS.

See "Fire Districts."

ESTRAYS.

See "Pound-keepers."

Fences, Legal.—Fences four and one-half feet high, in good repair, and lakes, ponds, rivers, brooks, creeks, hedges, ditches and other things equivalent to such fence shall be deemed sufficient, except fences on the sides of highways, which the owners of land are not bound to make or maintain. S. 3567.

The duty to fence the sides of its road is owed by a railroad company to the immediate abutters only.—*Delphia v. R. R. Co.*, 76 Vt. 84.

FENCE VIEWERS.

Three fence viewers are chosen annually at the annual town meeting. S. 2980.

Vacancies may be filled by the selectmen till an election is had. S. 2988.

A fence viewer must be sworn before entering upon the duties of his office, and a record thereof be made in the town clerk's office. S. 2989.

Duties.—When the dividing line between lands is so situated that a fence cannot be made thereon, and the owners cannot agree, either party may apply to the fence viewers, who, after giving reasonable notice to the opposite party, shall determine where the fence shall be made, and how much, and what part each shall maintain; which decision shall be final. S. 3571.

They are required upon request to examine fences in their towns, and, when called upon to act, give notice to the parties interested of the time when they will examine a fence or line between adjoining lands, before they make a division between the same. It is their duty to certify their decisions, and a record of the same, when made in the office of the clerk of the town in which the line fixed by them is situated, is valid against the parties, their heirs and assigns. SS. 3576, 3577.

Decisions as to Pasture of Animals.—The decision of fence viewers as to the number of animals that may be pastured on lands without a division fence, when recorded in the town clerk's office, shall be final. S. 3570.

FERRIES.

See "Selectmen."

FIRE DISTRICTS.

Established.— The selectmen, upon application in writing of twenty or more freeholders of a town, residents of the proposed fire district, may establish in such town one or more fire districts, each not to exceed two miles square in extent, and may define their limits. Such districts shall be named by number in the order of their establishment. The selectmen shall file a certificate of their proceedings in the office of the clerk of the town, who shall record the same; and they may change the limit of a fire district upon a similar application in a like manner. S. 3152.

Organization.— The inhabitants of such district who are voters in town meeting shall be a body corporate. The annual meeting shall be held on the first Monday in January and shall be warned by the clerk, or in his absence, or neglect, by one of the prudential committee. SS. 3153, 3154.

Officers.— The officers of a fire district are a clerk, a prudential committee of three persons, a treasurer and a collector of taxes, a chief engineer, and such assistant engineers as are necessary, who shall rank in the order of their election. They are elected at each annual meeting, and vacancies may be filled at a special meeting. The selectmen of the town may fill a vacancy until an election, by the appointment of a resident of the district. S. 3155.

Powers.— District meetings may vote a tax upon the polls and taxable estate therein for the purpose of protecting the property in the district from damage by fire. The prudential committee and collector shall have the same power in assessing, levying and collecting such tax as town officers have in assessing and collecting town taxes. S. 3158.

Prudential Committee; Powers.— The prudential committee may, in the name of the district, make contracts and expenditures, for the preservation of property in the district from damage by fire; they may commence and prosecute actions in the name of the district, and defend and adjust actions against it. S. 3159.

Real Estate; By-laws.— A fire district may purchase and hold, in addition to the apparatus for extinguishing fires, such real and personal estate, not exceeding in value ten thousand dollars, as is necessary for the preservation of the fire apparatus; and may regulate by by-laws

the manufacture and safe-keeping of ashes, gun-powder and combustibles, and the preservation of buildings from fire, by precautionary measures and by inspection. SS. 3161, 3162.

GRAND JURORS.

One or more grand jurors are elected annually at the annual town meeting. They are nominated by members of the board of civil authority, and the town clerk is required within five days thereafter to return by mail to the clerk of the county court his certificate of their election, giving the full name and postoffice address of each juror. SS. 3065, 3066.

Each person drawn by the sheriff, or his deputy, to serve as grand jurors from a town containing more than two hundred inhabitants, is disqualified from again serving as juror, for two years from such drawing. S. 1127.

A town grand juror who has not taken the oath of office is not a grand juror *de facto*, and a complaint made by him will be quashed.—*State v. Rollins*, 65 Vt. 608.

FLOUR INSPECTOR.

The board of civil authority in each town may appoint an inspector of flour, who shall not be a manufacturer or dealer in flour, and who shall be sworn, and may appoint deputies for whose acts he shall be responsible. He may be removed by such board at a regular meeting, when such removal is for the public good; otherwise he holds his office until the first day of December following his appointment. It is his duty to inspect flour, packed in barrels or half barrels for sale or exportation. The manner in which he is to perform such duty and the compensation he receives are fixed by statute. SS. 4303-4314.

HEALTH OFFICERS.

Appointment.—The state board of health appoints a health officer for each town who, with the selectmen of the town, constitutes a local board of health. SS. 4675, 4676.

Duties.—The health officer is the secretary and executive officer of the local board and holds office for three years, and until his successor is appointed, unless he resigns, dies, or is sooner removed by the state board of health. He is required with other members of the board to make sanitary inspections whenever and wherever he has reason to suspect anything exists which may be detrimental to the public health. He may enter any building, in the performance of his duty, and shall by a written instrument, under his hand, order the destruction, prevention or removal, within a specified time, of all nuisances, sources of filth, or causes of sickness, as directed by the local board of health; and may, under the orders of the state board of health, order all churches and schools to be closed in times of epidemic or in the face of serious

sickness, which in his judgment may require the same, and may forbid and prevent the assembling of people in any place, when the public health and safety demand the same. SS. 4677, 4678.

Local Boards; Powers.— Local boards of health are in general empowered to abate all nuisances affecting the public health; to guard against the introduction of contagious or infectious diseases; to remove to isolation hospitals small-pox patients; to require the isolation of all persons and things infected with, or exposed to, contagious or infectious disease; to prohibit and prevent all intercourse and communication with, or use of, infected premises, places or things; they may call upon all sheriffs, constables and police officers to assist them in the discharge of their duties; and they may compel every person owning a dwelling house or other building, abutting on the public street, in which there is a public sewer, to have all drains and sewers from such house, or building, connected with such sewer, and may, when they deem it necessary, provide such house, or building, with plumbing in accordance with the plumbing regulations of the state board of health, and make necessary connections between the plumbing and the public sewer. Acts of 1902, No. 113, S. 13.

Full and minute directions are given in the statutes for the action of local boards, in cases of contagious diseases, and ample powers are conferred for the prevention of the spread of such diseases. They are required to make reports and returns to the state board of health, and to act in accordance with instructions from such board. No person can carry on the business of butchering in any building, or upon premises within two hundred feet of any dwelling house, without the consent, in writing, of the local board of health. *Ibid.*, SS. 14-24.

Chapter 193, does not authorize the state board of health to appoint for a town a health officer who is not a resident of that town.—*Nay v. Underhill*, 71 Vt. 66.

HIGHWAYS.

See "Selectmen."

HUNTINGTON FUND.

See "Town Treasurer."

INCORPORATED SCHOOL DISTRICTS.

See "Schools."

INCORPORATED VILLAGES.

See "Villages."

INTOXICATING LIQUORS.

By Act, No. 90 of the Public Laws of 1902, a new body has been created for the regulation of the sale of intoxicating liquors, to be

appointed by the selectmen of a town, in which a vote has been taken, authorizing the granting of licenses. This body is denominated the Board of License Commissioners, and consists of three persons, who are not engaged directly or indirectly in the manufacture or sale of intoxicating liquors. They are disqualified from holding any other public office than that of notary public, and each of them must have been a resident of the town for at least two years immediately preceding his appointment. One member is appointed from each of the two leading political parties, and the third member may be appointed also from one of said parties.

For the provisions of this new law, the reader is referred to the act itself creating it, as published in the volume of Public Acts of 1902.

JAILER.

The selectmen of a town may appoint a jailer of the lockup and may remove him at pleasure.

Such jailer shall be sworn and shall perform the duties and be subject to the penalties imposed on county jailers, and shall have the same fees. SS. 5303, 5304.

JURORS.

See "Grand Jurors," "Town Clerk."

LEATHER INSPECTORS.

One or more inspectors of leather are chosen annually at the annual town meeting. S. 2980.

LIBRARIES.

Towns may establish and maintain public libraries therein with or without branches, for the use of their inhabitants. A town which has established a public library may elect at its annual meeting a board of five trustees, who shall have full power to manage such public library, and to receive, control, and manage any property which shall come into the hands of the town by gift, purchase, or bequest, for the use of such library. SS. 887, 889.

Trustees; Moneys.—The first board of trustees shall be elected for the terms of one, two, three, four, and five years, respectively, and the trustees chosen thereafter shall be elected for a term of five years each.

Moneys raised for a library shall be paid out by an agent to be appointed by the selectmen, except in towns electing library trustees. SS. 890, 892.

LISTERS.

Election.—Three, four or five listers are chosen at the annual town meeting. In towns of less than four thousand inhabitants, they are elected by ballot when required by three voters present. SS. 2980, 2983.

Selectmen cannot act as listers. S. 3026.

Official Oath.— Each lister is required to take and subscribe and file in the town clerk's office, before entering upon his duties, the oath prescribed by law, and the oath so subscribed is recorded in the town clerk's office. If the lister violates his official oath, he is guilty of perjury and is punished accordingly. S. 438.

Listers before entering upon their duties must be sworn to their faithful performance. The oath to be made to the list on completion thereof is not such compliance.—*Ayers, Executor v. Moulton*, 51 Vt. 115.

The oath required of the listers before entering on their duties need not be recorded to validate their acts.—*Day v. Peasley*, 54 Vt. 310.

In order to make a valid grand list under the Act of 1880, it is necessary for the listers to take both oaths; the one preliminary as a qualification for office and the other a certification of the completed list.—*Walker v. Burlington*, 56 Vt. 131.

It is not necessary that the lister take the constitutional oath.—*Rowell v. Horton*, 58 Vt. 1.

Penalty for Not Serving.— If a lister, after accepting the office, does not perform its duties, he shall be fined not more than one hundred dollars. S. 2992.

Abatement Board.— The board of civil authority with the listers shall constitute a board for the abatement of town taxes in their respective towns; and the acts of a majority of those present at a meeting shall be treated as the acts of the board. S. 3067.

Abatement; Meetings; Powers.— Meetings of such board shall be notified like meetings of the board of civil authority, except that one at least of the listers shall have personal notice of such meetings.

The board may abate the tax of persons who have died insolvent, removed from the state, or are unable to pay their tax; and they may abate in whole or in part, taxes in which there is manifest error, or in which there is a mistake of the listers.

The board has the same power in abating taxes as towns have in town meeting; but the sum so abated shall not exceed the twentieth part of any tax-bill.

The board of civil authority shall keep a list of taxes so abated, and the collector shall, in the presence of the board, mark in his tax-bill the taxes abated; and the person against whom they were assessed shall be discharged from their payment. SS. 3068-3071.

The determination of the board of civil authority on an appeal from the decision of the listers is a final judgment, not subject to collateral attack.—*Phillips v. Bancroft*, 75 Vt. 357.

Collateral Inheritance Tax.— Under acts No. 46, Acts of 1896, and No. 30, Acts of 1904, with certain exceptions specified, every person is subject to a tax for the use of the state equal to five per cent. of the money value of any legacy or distributive share comprised of, or arising from, property or any interest therein passing to him by will, the law of descent, or the decree of a court in this state, from any deceased person who owned such property at the date of his decease.

Deduction is made in cases where a similar tax has been lawfully paid to another state, or government, other than the United States, for, or on account of, such legacy or distributive share, so as to make the amount paid within and without this state equal to five per cent. of the total value of the legacy or distributive share.

The debts due from non-residents are not subject to the collateral inheritance tax prescribed by No. 46, Acts 1896.—*In Re Joslyn's Estate*, 76 Vt. 88.

Report to Tax Commissioner.—The listers shall annually, within ten days after the date at which the grand list is required by law to be by them filed with the clerk of the town, report to the commissioner of state taxes, upon blanks to be furnished by him, the names of all persons who have acquired within the year ending on the first day of April in the year in which such report is made, (all) real or personal estate, situate in the town, or any interest therein, passing from any deceased person by the law of descent, by will, or by the intestate laws of the state. No. 30, SS. 77, 78, Acts of 1904.

Foreign Loans, Answers as to.—The listers in each town shall inform the commissioner of state taxes of all affirmative answers to questions in the inventories as to loans held without the state. S. 401.

Hotel Keepers and Employers to Furnish Names.—Keepers of hotels, boarding and dwelling houses, shall, upon application of a lister in the performance of his duties, give the names of all persons residing in their respective houses. And all employers shall give to the listers, on application, the names of their employees. S. 447.

Inventories; Blanks Furnished by Secretary of State.—The secretary of state shall annually, on or before the first day of March, furnish at the expense of the state, to the several town clerks, blank inventories sufficient in number to meet the requirements of this chapter, and in the most convenient form with suitable interrogations, to contain, when filled, a full statement of all taxable property, real and personal, of each tax-payer in said town. S. 398.

On or before the first day of April, he shall distribute to each town blank books in which to make up the grand list, and blanks for the returns to be made to him of such list. S. 225.

Distributed.—The town clerk, with the aid of the listers, distributes at the annual town meeting a blank inventory to each person liable to taxation in the town, who is present. The listers are also required to send a copy of the blank by mail to the principal officer of every corporation taxable in the town who does not reside therein, if known to the listers, and to each non-resident taxable known to the listers, except such as are taxable only for real estate. S. 404.

Returned.—Every person, except non-residents taxable only for real estate, is required to procure a blank inventory, and on the first day of

April fill the same, making full answers to all the interrogatories, and take and subscribe the oath therein contained. If he be a resident, it is his duty to deliver the inventory so prepared to the listers, or either of them, on personal demand, or within three days after written notice; and if a non-resident, he is required to forward such inventory to the listers, on or before the twentieth day of April. The listers, and all persons by law authorized to administer oaths, may administer the oath contained in the inventory. S. 405.

Improper, Penalty for Accepting.—If a lister accepts the inventory of a person not properly made out and sworn to, or neglects or refuses to set in the lists as required by law each item described in an inventory, he shall for each such refusal, or neglect, forfeit to the town the sum of two hundred dollars. S. 439.

Taken Up.—The listers shall, on the first day of April, proceed to take up such inventories, and make such personal examination of the property which they are required to appraise, as will enable them to appraise it at its true value in money. S. 408.

Final Disposition.—The annual inventories filled out by tax-payers are, on or before the first day of June in the year in which they are made, lodged by the listers in the office of the town clerk, there to remain for twelve months from such first day of June. S. 440.

Other Towns' Listers Notified.—After the listers have collected the inventories in their respective towns, they shall ascertain therefrom the several sums due and owing from the tax-payers in their respective towns to inhabitants in other towns, and shall immediately notify the listers in the towns where the persons reside to whom said debts are due, or to become due, giving the name of the person to whom the debt is due, the amount thereof and the name of the person from whom due. S. 443.

List Completed.—When an inventory is properly filled up, sworn to and delivered, and in the opinion of the listers contains full, true and correct answers to all the interrogatories therein, and is a full, true and correct statement of all the property for which the tax-payer returning it is taxable, they shall complete the list of such tax-payers as provided in this chapter. S. 409.

Listers are liable for their omission of express and obvious matter of fact, duties and for all injurious misconduct in their office even in matters of discretion, when it can be shown that they acted *mala fide*.

Fraud, or malice, or want of common care on the part of the listers will render them liable for injuries caused by their acts to owners of land or other property wrongfully taxed.—*Stearns v. Miller*, 25 Vt. 20.

Plaintiff residing in Randolph hired in winter of 1854-5 a farm in Braintree for one year from 1st April following. In March, 1855, he removed his wood and furniture from R. to his farm, but the previous occupant being not ready to leave, he left R. with the rest of his personal property and spent a short time in Brookfield, until April 4, when he moved to the farm in B., and

resided there during the rest of the year. *Held*, that he was so far a resident of B., April 1, that he was liable to assessment and taxation there for that year.—*Mann v. Clark*, 33 Vt. 55.

Doomage.—If a person wilfully omits to make, swear to, and deliver an inventory, or to answer any interrogatory therein, required by law, or makes a false answer or statement therein, or if the listers have sufficient reason to believe that an inventory does not contain a full, true and correct statement of the taxable property of the person filling out the same, then said listers shall ascertain as best they can, the amount of taxable property of such person, appraise the same at its value in money and double the amount so obtained. If the sum obtained by doubling is in their opinion less than the amount of taxable property of such person, the listers are required to assess such person a further sum which will, in their judgment, make up such amount. If no taxable property of such person can be ascertained by the listers, it is their duty to assess such person the sum which in their judgment is the true value of his taxable property. One per cent. of the amount so obtained, with the amount of the taxable poll, if any, constitute the grand list of such person. S. 424.

The listers shall make a list of all property by them appraised or assessed at a given rate and lodge the same with the town clerk by 20th June in each year, and it was *held*, that this duty extended to cases of assessment as *two-folds* as well as others.—*Howard v. Shumway*, 13 Vt. 358.

The listers cannot double the amount obtained by arbitrary assessment. In doubling they must proceed as under the Acts of 1880, and find property *in specie*, appraise it, and double the amount so obtained.—*Rowell v. Horton*, 58 Vt. 1; *Howes v. Bassett*, 56 Vt. 141.

When a tax-payer claims in his inventory that he has no property, the listers in proceeding to assess him must find property *in specie*; and if there is lawful evidence tending to show that there is such property, the weight of such evidence is for the listers and board of civil authority, and the decision of these tribunals cannot be collaterally attacked in a proceeding to recover taxes paid.—*Weatherhead v. Guilford*, 62 Vt. 327.

Notice to Tax-payer of List Completed.—When the list of a person has been made up under the provisions of the preceding section, he shall be notified thereof by the listers on or before the first day of May by a written notice delivered to him personally, or left at his last and usual place of abode, if a resident, and, if a non-resident, mailed to him at his last known residence. In case of a corporation, the notice shall be delivered or mailed to the officer whose duty it is to make the inventory. S. 425.

It is not the duty of listers to notify persons whom they assess for bank stock of the sum in which they are assessed, and of the time and place when and where they will hear those aggrieved by such assessment.—*Clement v. Hale*, 47 Vt. 680.

The notice required by the statute to persons assessed for money on hand, etc., must be given each year, unless some legal reason exists for not giving it, or the assessment will not be valid.—*Dean v. Aiken*, 48 Vt. 541.

In making the lists under the law of 1880 it is incumbent on the listers to give notice to the tax-payers whom they assess for money on hand, debts due,

stock in trade, etc., of the sum at which they are assessed, and of the time and place for hearing grievances; and one who willfully refuses to make an inventory is entitled to such notice. The inventory is not a proper notice.—*Brush v. Baker*, 56 Vt. 143.

Where a tax-payer's list is made by the doubling process, a notice from the listers referring to the section of the statute under which they have proceeded and notifying the tax-payer that they have assessed him a certain sum is sufficient.—*Meserve v. Folsom*, 62 Vt. 504.

Listers should deduct from the offset claimed by the tax-payer on account of indebtedness the aggregate amount of United States bonds and other stocks and bonds exempt by law from taxation, also stocks in foreign corporations exempt from taxation in this state, including stocks in national banks in this state.—*Smalley v. Burlington*, 63 Vt. 442.

Abstract Deposited With Town Clerk.—The listers in each town shall on or before the fifteenth day of June, annually, make and deposit with the town clerk an abstract of the grand list of such town, in the form given in the statute. SS. 453, 454.

Personal Estate, Where Taxed.—Taxable personal estate shall be set in the list to the last owner thereof on the first day of April in each year, in the town, village, school and fire district where he resides, with the following exceptions:

I. Goods, wares, merchandise, stock in trade, including stock employed in the business of the mechanic arts, and machinery employed in manufacture, shall be set in the list to the owner in the town, village, school and fire district where the property is situated.

II. Personal estate employed in the business of a partnership shall be set in the list to the partnership in the town, village, school and fire district where the estate is situated, and each partner shall be liable for the whole tax.

III. Horses, asses, mules, neat cattle, and sheep shall be set in the list to the owner, or if he resides out of the state, to the keeper, in the town, village, school and fire district in which they are last kept on the first day of April.

IV. Personal estate, belonging to wards, not embraced in any of the three preceding clauses of this section, shall be set in the list to the guardian in the town, village, school and fire district where the ward resides, provided the ward resides in this state; otherwise it shall be set in the list to the guardian in the town, village, school and fire district where he resides.

V. Personal estate not embraced in clauses I, II, and III of this section, held in trust, the income of which is to be paid to another person, shall be set in the list to the person holding it in trust, in the town, village, school and fire district where such other person resides, provided he resides in this state; otherwise it shall be set in the list to the person holding it in trust in the town, village, school and fire district where he resides.

VI. Personal estate of a deceased person in the hands of an executor or administrator and not distributed, shall be set in the list to the estate,

or to the executor or administrator, in the town, village, school and fire district where such person last resided; provided that such part thereof shall be set in the list in the town, village, school and fire district where it is situated or kept as would, under the provisions of clauses I and III, be liable to be so set in the list if the owner of the estate were alive.

VII. Personal estate situated in this state owned by persons residing without the state, shall be set in the list to the person having the same in charge, in the town, village, school and fire district where the same is situated, except as otherwise provided in clauses III, IV and V of this section, and shall be holden for all taxes assessed on such list.

VIII. The excess of deposits over fifteen hundred dollars in all savings banks, savings institutions and trust companies within or without this state on the first day of April in any year, shall be set in the list to the owner like other personal estate. S. 374.

Listers are liable to an action on the case for setting property of plaintiff against him in a town where he does not live and where the property is not liable to be put on the list; the plaintiff having been compelled in consequence to pay taxes.—*Henry v. Edson*, 2 Vt. 499.

A corporation aggregate, especially an eleemosynary corporation, cannot be assessed and set in the list and taxed for money on hand or debts due it.—*Congregational Soc'y v. Ashley*, 10 Vt. 241.

Personal property not in the possession of a tenant is to be taxed in the town where he resides; and it makes no difference that the person assessed gave in his list to the town where he does not reside, to be taxed thereon.—*Blood v. Sayre*, 17 Vt. 609.

Debts due from solvent debtors on promissory notes are personal estate, and when held by an agent to collect and pay proceeds to another without the state, are to be considered as "held in trust" within the meaning of the statute, for purposes of taxation.—*Catlin v. Hull*, 21 Vt. 152.

If a firm suffer any injury and damage from the listers setting their property or a part thereof in some other school district, they will be liable, and the firm can sustain an action against them.

The property belonging to the partnership should be set in the district where it is situated and the business carried on and a majority of the partners reside.—*Fairbanks v. Kittredge*, 24 Vt. 9.

So property bequeathed to and held by a trustee, the interest of which is to be paid to a person during life and after her decease, the principal to be paid to the testator's heirs, is assessable to the person entitled to the income.—*Webb v. Burlington*, 28 Vt. 188.

A resident of R. hired a farm in B. for one year from April 1st. In March following he removed his effects to the farm, but did not actually take up his residence there till April 4th, but resided there the rest of the year. Held, that he was so far a resident of B. as to be taxable there as of April 1st.—*Mann v. Clark*, 33 Vt. 55.

Where the owner of a chattel distrained for taxes causes it to be bid off to himself at the sale for taxes, the measure of damages which he can recover for the wrong done to him is what he pays for the chattel at the sale.

A town that sets a man in the grand list and proceeds to tax him has on it the burden of proof to show that he is a resident of the town and liable to taxation there.—*Hurlburt v. Green*, 41 Vt. 490., 42 Vt. 316.

If the quinquennial appraisal of real estate is not sworn to by the listers, it is void as a basis of taxation; and a subsequent annual list, made, certified, and sworn to according to the provisions of the statute in relation to such lists, does not cure the defect.—*Houghton v. Hall*, 47 Vt. 333.

A lister's oath need not embody a statement of compliance with every detail of official duty; thus, it is presumed that the valuation relates to the time

required by law, i.e., April 1, also that it was made on the basis required by law, as the current value of the property, etc.—*Brock v. Bruce*, 58 Vt. 261.

A trust fund created by will should be taxed where the administrator resides.—*Clark v. Powell*, 62 Vt. 442.

Corporations are taxed on all personal estate owned by them in the state.—*Waite v. Hyde Park Lumber Co.*, 65 Vt. 103; *Willard v. Pike*, 59 Vt. 223.

Savings Banks; Depositors.—The treasurer of each savings bank, savings institution and trust company shall, on or before the sixth day of April, annually, transmit to the listers of each town in which a depositor resides who has a deposit in such savings bank, savings institution, or trust company, in excess of fifteen hundred dollars, on the first day of April, a statement of the name of each depositor and the amount of his deposit in excess of two thousand dollars. He shall, when requested by the listers of a town, transmit to the town clerk of that town within five days from the time of such request, the name and amount of deposit of each depositor residing in such town. S. 375.

Residence, Temporary, Removal of.—The residence of a person, for the purpose of taxation, shall not be changed by a temporary removal from a town to avoid taxation. S. 377.

If listers in good faith assess one for personal property who has removed from the town, leaving no property there, under the honest belief that his removal was for the purpose of dodging taxation or changing his list to another town, they act judicially, and are not liable to the person assessed, even though their belief was an error.—*Davis v. Strong*, 31 Vt. 332.

Evidence as to one's intention to engage in business in a particular place is not admissible to show his intention to make that place his residence, but evidence is admissible to show that one registered and voted in another state the same year of the assessment complained of, if coupled with an offer to prove that the laws of such state required a residence there of one year before voting.—*Fulham v. Howe*, 60 Vt. 351.

Corporate Stock, to Whom Set.—Shares of stock in corporations except railroad corporations, shall be set in the list like other personal estate to the owner thereof, in the town where he resides, if he resides in the state, otherwise in the town where the corporation issuing such stock has its principal place of business. S. 378.

Stocks in national banks located in this state should be set in the grand list to the owner in the town or city where he resides, in accordance with the provisions of the statute, which is not in conflict with the act of Congress creating the national banking system.—*Clapp v. Burlington*, 42 Vt. 579.

Savings banks are not owners of stocks, subject to taxation under the statute.—*Rutland Savings Bank v. Rutland*, 52 Vt. 463.

The stock of a non-resident stockholder of a corporation located in this state may be legally set in the list of the town in which the corporation has its principal place of business; and the corporation may be compelled by *mandamus* to pay the taxes assessed upon such stock.—*St. Albans v. National Car Co.*, 57 Vt. 68.

Personal Property, Appraisal of.—The taxable personal estate contained in the inventory shall be appraised by the listers at its value in money on the first day of April; and the listers shall appraise each item of such property at such sum as they would appraise the same if

payment of a just debt due from a solvent debtor, having regard to the current value of such property, and the sales thereof, other than auction sales, in the locality where it is situated. The listers may appraise debts due or to become due from insolvent debtors at the valuation placed upon the same by such tax-payer, or may examine the tax-payer under oath as to such valuation and may appraise the same as they deem just. S. 410.

The listers have jurisdiction of the subject-matter, may decide upon legal evidence, and the tax-payer is bound by their decision.—*Weatherhead v. Guilford*, 62 Vt. 327.

Deduction, Mode of.—The listers shall deduct from the appraised value of such personal estate a sum equal to the excess, if any, of the debts owing by such tax-payer over the aggregate amount of his United States government bonds and other stocks and bonds exempt from taxation by the laws of this state, and the amount of his deposits in all the savings banks, savings institutions and trust companies in this state or elsewhere, not exceeding fifteen hundred dollars, and shall take one percent of the balance as the list of the personal estate of such tax-payer. S. 411.

Plaintiff purchased \$800 worth of goods in Boston and had them in his possession in this state April 1, for which goods he was indebted. The listers did not allow the \$800 debt in offset, but did not include the goods in making the list. He appealed to the selectmen and they affirmed the list. Action of the listers *held* valid and the decision of the selectmen, final.—*Day v. Peasley*, 54 Vt. 310.

Debts Owning; Where Returned.—A person taxable for personal estate in more than one town who wishes to claim a deduction for debts owing, shall insert answers to the interrogatories addressed to persons claiming such deductions only in the inventory returned in the town where he resides. S. 407.

Deduction Not Allowed.—No deduction for debts owing shall be allowed unless the amount of each debt is stated in the inventory with the name and residence of the person to whom owing; nor unless the inventory contains a statement of the aggregate amount of all deposits in all savings banks, savings institutions and trust companies within or without this state. S. 412.

Deposit to Avoid Taxation; Forfeiture.—If a person having such deposits in excess of fifteen hundred dollars does not truly state in his inventory the amount of such deposits, he shall forfeit to the town in which he resides the amount of such excess, to be recovered by an action in the name of the town with costs. S. 413.

Deductions on Personalty in Other Towns.—If a person duly filling out, swearing to and returning an inventory to the listers of the town in which he resides is taxable for personal estate in any other town in the state and claims a deduction on account of debts owing, the listers

of the town of his residence shall ascertain the amount of deduction to which he is entitled, and first offset such deduction against the appraised value of his personal estate in the town of his residence; if the amount of deduction to which such tax-payer is entitled is in excess of such value the listers shall, at his request, certify the amount of such excess or any part thereof to the listers of such other town as he may designate, in which he is taxable for personal estate, and the listers in such other town shall deduct any amount so certified to them from the list of such tax-payer's personal estate in such town if he has duly filled out, sworn to and returned an inventory to the listers of such town. S. 417.

Stock Assessments; Deduction.—In assessing stockholders for stock in a manufacturing corporation, the value of its real estate taxed in this state or elsewhere and the value of all its personal estate and machinery taxed to such corporation in this state, under clause I of section three hundred seventy-four, and of personal estate taxed outside the state, shall be deducted from the whole value of its stock and the remaining value only shall be taxed; and in assessing for stock in all other corporations, the value of its real estate taxed in this state or elsewhere, shall be deducted from the whole value of its stock, and the remaining value only shall be taxed. S. 383.

The stock of a corporation cannot be assessed to the stockholders when it does not exceed in value the value of the property which it represents and which is assessed to the corporation.

A manufacturing corporation organized under the laws of and located in this state is properly taxed for debts due it.—*Waite v. Hyde Park Lumber Co.*, 65 Vt. 103.

Deposits in Banks to Avoid Taxation.—If a person makes a deposit in a savings bank, savings institution or trust company in this state or elsewhere, in trust or in the name of another person for the purpose of avoiding taxation in the town where the person making the deposit resides, he shall forfeit the amount of such deposit to such town, to be recovered by an action in the name of the town with costs. S. 414.

Indorser or Surety, Liability of.—A liability as indorser or surety shall not be deemed a debt owing for which a deduction may be claimed. A liability on a joint indebtedness shall, as to each of the persons bound, be deemed a debt owing for only so much as such person would be obliged to pay if all the persons jointly bound were to pay equal parts of the debt. S. 416.

Bank Deposits, What Exempt.—The provisions of this chapter shall not apply to the taxation of deposits of savings banks, savings institutions and trust companies otherwise taxed by the laws of this state, except as provided in this chapter. S. 445.

Polls, Where Taxed; Exemptions.—The polls of the male inhabitants of the state, citizens and aliens, over twenty-one and under

seventy years of age, shall be set in the list, in the towns in which they reside on the first day of April in each year, at two dollars each, except the polls of persons actually poor or from whom a tax is not likely to be collected, or of persons who, while in the service of the United States in the war for the suppression of the rebellion in the southern states, lost an arm, leg, or eye-sight, or contracted an equivalent disability to be determined by the degree of disability for which such person is pensioned; or who, having been honorably discharged, has no taxable estate, if application be made for exemption before the completion of the grand list. The listers shall set the names and polls of the last named class of persons exempted by reason of military service, in the grand list, and against each name the words "soldier exempt." Such exemption shall not deprive the person of the right to vote in town meeting. S. 357.

Polls; Exemptions.—Polls of members of the state militia and of fire companies may be exempt from taxation if their respective towns so vote. S. 361.

A citizen liable to taxation by reason of his property, does not become exempt by enlisting in the army of the United States.—*Webster v. Seymour*, 8 Vt. 135.

Property Exemptions.—The following property is exempt from taxation:

I. Real and personal estate owned by this state or the United States; United States' securities which are specially exempt from taxation by the laws of the United States at the time of making the list; but interest and income from such securities may be taxed like other personal estate.

II. Real estate and buildings on leased land, owned by a post of the Grand Army of the Republic, and used for the purposes of the post only, shall, so long as it is so used, be exempt from taxation.

III. Shares of stock in a corporation situated in another state, when all the stock of such corporation is taxed in such state to the holders, whether residing within or without such state, or when the corporation is taxed in such state for all its stock.

IV. Personal estate owned by inhabitants of this state situated and taxed in another state.

V. Stock in a railroad corporation in this state.

VI. (Repealed.)

VII. Real and personal estate granted, sequestered, or used for public, pious or charitable uses; real and personal estate used for the purposes of a public or private circulating library open to the public and not used for profit; lands leased by towns for educational purposes, and lands owned or leased by colleges, academies, or other public schools, or leased for the support of the gospel; but private buildings on such lands, and farms owned or used by towns in the support of the poor, shall be set in the list to the owners thereof, and shall not be exempt.

VIII. Buildings erected by the trustees of a normal school, or by their agent, and accepted as a boarding house for pupils in the school,

so long as such buildings are devoted to the exclusive interests of said school.

IX. Lands used for cemetery purposes and the structures thereon, trust funds and other property belonging to, or held by, cemetery associations, and the lots of the proprietors thereof.

X. Household furniture of every person, not exceeding five hundred dollars in value; wearing apparel; private and professional libraries; mechanics' tools, and farmers' tools including carts, wagons and vehicles, necessary to carry on their respective occupations; provisions necessary for the consumption of the family of a person for one year; live fowls not exceeding twenty dollars in value; one watch, one organ or piano; sheep, cattle, horses and swine, not more than four months old on the first day of April, and hay and produce sufficient to winter out the stock; and for each person one wagon, one sleigh, and harnesses for using the same. But no pleasure wagon or other vehicle, exceeding one hundred dollars in value, shall be exempt from taxation. S. 362.

St. Johnsbury Academy held exempt from the payment of taxes under the statute.—*Willard v. Pike*, 59 Vt. 202.

Lands set apart for the ministry are exempt from taxation.—*Herrick v. Randolph*, 13 Vt. 525.

A promissory note owned by an inhabitant of this state is taxable here, although secured on land in another state, and the mortgagee's interest is taxed there.—*Bullock v. Guilford*, 59 Vt. 516.

An offset claimed on account of indebtedness may be reduced by deducting United States government bonds and other stocks and bonds exempt from taxation in this state held by the tax-payer.—*Smalley v. Burlington*, 63 Vt. 443.

Quadrennial Appraisal.—In the year 1898, and quadrennially thereafter, the listers shall make a new appraisal of the taxable real estate in each town and return the list thereof to the town clerk's office on or before the first Tuesday in July in such year; but in towns or cities having more than five thousand inhabitants, by the last United States census, they shall return the list on or before the fourth Tuesday of August in such year. S. 387.

The statute as to quadrennial lists must be substantially complied with. Thus where the appraisal was made on June 12th and signed by one of the listers, and so left in the town clerk's office until taken to the meeting of the county board of listers and signed by another of the listers and indorsed as approved by the chairman of the board, it was held that the list was invalid.—*Ayers v. Moulton*, 51 Vt. 115.

The validity of a list on a basis of taxation is always upheld where it has appeared that it was made in good faith and the only errors complained of were the result of mistakes in judgment on the part of town officers.—*Wilson v. Wheeler*, 55 Vt. 446.

The entry on the grand list was "one undivided half of a soapstone or free-stone quarry on the farm of L. H. Davis, with four acres of land, \$11,833." Held, that the list was not rendered void by the fact that no land was owned with the quarry.—*Waterman v. Davis*, 66 Vt. 83.

Real Estate Classified.—In such appraisal, buildings, not having more than ten acres of land attached thereto, mills, factories, and build-

ings on public lots, stores, forges, furnaces, mines and quarries where stone is quarried, shall be set in a column separate from other real estate, and designated as first-class real estate. All other real estate shall be set in a column by itself and designated as second-class real estate. S. 388.

List, Oath to.— When the listers return the quadrennial list, prepared under the provisions of the preceding sections, to the town clerk, they shall attach to such a list a certificate, signed by a majority of them and verified by oath before any magistrate, by law authorized to administer oaths, in the form given in the statute. S. 391.

Neglect to file in the town clerk's office on or before September 15th a copy of the quadrennial appraisal, as required by R. L., § 308, did not vitiate subsequent grand lists based upon that appraisal.—*Smith v. Blair*, 67 Vt. 658.

The true date when the listers were sworn and deposited the quadrennial appraisal in the town clerk's office may be shown by parol, although there is attached to the appraisal, as deposited, a certificate that the oath was administered on a day later than that within which the list should have been completed and filed.—*Wilmot v. Lathrop*, 67 Vt. 671.

V. S. 391 is not satisfied by an oath taken before a notary, and a quadrennial list sworn before a notary is invalid. A list required to be returned to the town clerk's office by the first Tuesday of July but not returned until the last day of August, is invalid. The seasonable return of the quadrennial list is essential to secure the tax-payer's right of appeal to the board of civil authority.—*Meacham v. Newport*, 70 Vt. 264.

The certificate attached to the quadrennial appraisal when returned to the town clerk's office, if sworn to before the town clerk and not before a justice, is invalid, as is also a grand list based thereon. Listers may take their preliminary oath before the town clerk, it being returned to the town clerk's office.—*Potter v. Lewis*, 73 Vt. 367.

Copy Filed.— On or before the fifteenth day of September in the year of the appraisal, the listers in each town shall make out in blank books to be provided by the secretary of state, and deposit in the town clerk's office, for the use of their successors in office, a fair copy of the list of real estate in such town, embracing the following particulars:

I. The name of each person assessed for real estate in such town.

II. The real estate assessed to such person, specifying each parcel thereof, the class to which it belongs, the valuation, and the village, school and fire district in which each parcel is situated. S. 394.

Mere circumstantial errors in detail of making up a grand list will not render it void as a basis for taxation; nor by any error of judgment in the listers in a matter properly within their discretion.—*Henry v. Chester*, 15 Vt. 460.

The duties of listers, "to set in the list the appraised value of all real and personal estate in each school district severally," is wholly ministerial.—*Fairbanks v. Kittredge*, 24 Vt. 9; *School District v. Kittredge*, 27 Vt. 650.

Where a town votes to set off a parcel of land from one school district and add it to another, it would still be subject to school district taxes already assessed for the former district.—*Ovitt v. Chase*, 37 Vt. 196.

The acts of the listers were ministerial, not judicial, in placing plaintiff's property in a wrong district, and could not give that district jurisdiction over plaintiff, hence the tax assessed against him was wrong and could not be enforced by distraint of his horse.—*Hubbard v. Newton*, 52 Vt. 346. See also *Woodward v. Isham*, 43 Vt. 123.

Real Estate Omitted, or Set Wrongly.—If real estate situated in a village, school or fire district is not set in the list, or is not designated as belonging to such district, the listers shall at any time make such designation, or in case of an omission, make and attach to the list a statement of the appraised value of such real estate, which appraisal shall stand and be included in the list for such district until another is made. S. 395.

Listers who have wrongly designated property of one school district as belonging to another and refuse or neglect to correct the error when requested by a special committee of the injured district, are liable for the damages resulting from their action.—*School District v. Kittredge*, 27 Vt. 650; *Fairbanks v. Kittredge*, 24 Vt. 9.

An error of the listers in wrongfully designating the property of a school district is subject to correction by the records of the town.—*Ovitt v. Chase*, 37 Vt. 203.

Farm Buildings.—Buildings on a farm of more than ten acres, occupied for the use of the farm, shall be appraised as part thereof and set in the list with real estate of the second class. S. 389.

Railroad Real Estate.—The real estate of railroad companies, not used in operating their road, shall be appraised by the listers of the several towns, and set in the several grand lists the same as the property of individuals. S. 390.

Sequestered Lands.—In making a quadrennial appraisal, the listers in towns and commissioners in gores shall appraise and set in the list apart from the taxable real estate, lands sequestered for public, pious, or charitable uses and paying an annual rent. Such list shall contain the name of the occupant and the amount, value and rent of each parcel of such land and the purpose to which the rent is applied; and in case of school lands it shall show the rent paid on town school, county grammar school and university lands, and on lands granted to schools or colleges by name. S. 397.

Real Estate Where and to Whom Taxed.—Taxable real estate shall be set in the list to the last owner or possessor thereof, on the first day of April in each year in the town, village, school and fire district where it is situated. S. 368.

Plaintiff deeded land in March and the deed was filed for record, but was not recorded and was destroyed, in April, and the land repurchased by the plaintiff from the grantee. The listers, ignorant of the transaction, placed the land on plaintiff's list. *Held*, that their action was illegal, as plaintiff was not the owner on April 1.—*Pitkin v. Parks*, 54 Vt. 301.

The pipes and hydrant of a water system are real property.—*Stiles v. Newport*, 76 Vt. 154.

Real Estate, Mortgaged.—If real estate is mortgaged, the mortgagor shall, for the purpose of taxation, be deemed the owner thereof until the

mortgagee takes possession, after which the mortgagee shall be deemed the owner. S. 369.

Listers were not liable for setting parcels of mortgaged real estate in a list to the mortgagor, as it is only taking possession under it or a final foreclosure that gives the right to set it to the mortgagee.—*Wilson v. Marsh*, 34 Vt. 352.

Real Estate, Unoccupied, Owner Unknown.—If the owner of unoccupied real estate is unknown to the listers, the same shall be set in the list in the name of the original grantee, or by such other description as in their judgment will best designate the same. If a division of the original rights of grantees is made in whole or in part, each lot of every division shall be set in the list separately from other lots of the same right. S. 370.

Deceased Person's Estate.—The undivided real estate of a deceased person shall be assessed to such person's estate or to his executor or administrator or to the possessor thereof, until notice is given to the listers of the sale or division of the same with the names of the persons to whom it is transferred. When such estate is assessed to the estate, the executor or administrator shall pay the taxes assessed. S. 371.

A woman taking under her husband's will the use of property for a certain time, a list to his "estate" would not in effect be a list to her.—*School District v. Bridport*, 63 Vt. 383.

Lake Champlain, Wharves in.—Wharves erected in Lake Champlain and not within the limits of a town, shall, for the purpose of taxation, be considered as being in the towns adjoining said wharves. S. 372.

United States Land, Property on.—The property of a railway or other corporation having a right of way over or a location upon lands acquired by the United States, shall be taxed like other similar property. S. 373.

Engines and Boilers, Real Estate.—Engines and boilers, except railway and steamboat, kept or used for supplying power shall be set in the list as real estate. S. 358.

Perpetual Leases.—Perpetual or redeemable leases, except of lands exempt from taxation, upon which rent is reserved, shall be set in the list as personal estate, at a sum of which the rent is six per cent. S. 359.

Real and Personal Estate Listed at One Per Cent.—All real and personal estate shall, except as otherwise provided, be set in the list at one per cent of its value in money on the first day of April of the year of its appraisal. S. 360.

The listers rightly refused to allow as an offset to a tax assessed by them an indebtedness on goods of the tax-payer which they had not placed on his list.—*Day v. Peabody*, 54 Vt. 310.

Leased Land, Buildings on, Real Estate.—Buildings on leased land or land owned by persons other than the owner of the building shall be set in the list as real estate.

If such buildings were not set in the last quadrennial appraisal they shall be appraised and set in the list as real estate omitted from the last quadrennial appraisal. Acts of 1896, No. 11.

Error in Part Does not Vitate Whole Tax.—The fact that a tax is assessed upon a list a part of which is made up of property not taxable to the person assessed, or of real estate carried from an irregular or void quadrennial appraisal into an annual grand list, or of any property erroneously set in the list, shall not vitiate or render void the whole tax, but only that part of the tax which is assessed upon the erroneous or illegal part of the list. Acts of 1898, No. 17.

Real Estate; Appraisal.—The real estate in the last quadrennial appraisal, taxable to a person duly filling out, swearing to and returning an inventory, shall be appraised by the listers at the valuation established in such appraisal; if additional buildings have been erected or extensive repairs made, the listers shall make such addition to the appraisal of such real estate as they deem just; if there has been a large depreciation in the value of such real estate by reason of fire, flood or other accident, or the cutting or removing of timber therefrom, the listers shall make such deduction from the appraisal of such real estate as they deem just; and if there has been any great change in the value of any quarries where stone is quarried, the listers shall make such change in the appraisal of such quarries as they deem just.

If any real estate taxable to such person was omitted from the last quadrennial appraisal, the listers shall appraise the same at its value in money, subject to the rules directing the quadrennial appraisal of real estate. SS. 418, 419.

Probably the leading object of this section was to give the listers of succeeding years power to supply defects in the regular appraisal arising from partial omissions, but it is broad enough to cover an entire omission to make an appraisal.—*Blodgett v. Holbrook*, 39 Vt. 336.

Addition of Real Estate Exempt from Public Taxes.—If any real estate liable to town taxes, but exempt from public taxes and omitted from the preceding quadrennial appraisal for such cause, has been inserted in the list under the provisions of this chapter, one per cent of the appraised value of such real estate held by any person shall be subtracted from the list upon which he would be liable to be assessed for town taxes, and the remainder shall be the list of such person for the assessment of state and county taxes. S. 420.

In the charter of the town of Wheelock, "the land and tenements in every part of said township or precinct shall forever be free and exempt from public taxes, etc., etc." *Held*, that the term "public taxes" was used in said charter in reference to taxes pertaining to the public revenue as contradistinguished from local municipal taxes, such as town, parish, district and village taxes, assessed upon and to be expended for the use and immediate benefit of the particular municipality.—*Morgan v. Cree*, 46 Vt. 773.

The vote of the town exempting certain manufacturing establishments from taxation for a term of years is not in contravention of chapter 1, article 9, of the constitution of Vermont.—*Colton v. Montpelier*, 71 Vt. 413.

Apportionment in Case of Transfer.—When a part of a piece of real estate has been transferred in any year, the listers shall make such apportionment of the assessments thereon as they deem just. S. 421.

Individual Grand List.—One per cent of the appraised value of the real estate taxable to a person shall be added to the list of his personal estate and the sum so obtained, with the amount of his taxable poll, if any, shall constitute his grand list. S. 423.

Real Estate; Valuation.—Real estate situated in a town, if the last owner thereof of record is a non-resident and not taxable in such town for personal estate, shall be set in the list to such owner at the same valuation as if he had made a legal inventory. S. 426.

Real Estate Exemptions; Church Property.—The exemption from taxation of “real and personal estate granted, sequestered or used for public, pious or charitable uses” shall not be construed as exempting any other lands or buildings owned or occupied by any religious society, other than a church edifice and a parsonage and the out-buildings of such church edifice and parsonage, or a building used as a convent or school, the grounds adjacent to such church edifice, parsonage, convent or school kept and used as a lawn, play ground or garden, and the so-called glebe lands; nor shall it be construed as exempting from taxation the property of railroad corporations. But the lands or buildings exclusively used for the support of orphanages, homes, asylums or hospitals, which receive and care for, without pay, indigent, old or infirm patients or inmates, shall be exempt from taxation. S. 364.

Forest Land.—The listers of any town in apportioning the grand list of any year shall note therein the exemption of any lands in said town under the provisions of the act entitled “An act to encourage planting and perpetuating forests,” approved December 7, 1904. Acts of 1904, No. 17.

Homesteads.—If a person purchases for a home and occupies and improves land that has been unoccupied and neglected, or used for pasturage only for at least two years, and repairs or erects thereon buildings suitable for a home, or otherwise improves such land, said buildings and improvements shall be exempt from taxation for a term of five years, if the town so votes. S. 366.

The listers shall set in the grand list, for the purpose of taxation, the appraised value of such lands before improvements were made; and shall also enter in the grand list a statement of such exemptions and the date of their expiration. S. 367.

Abstract of Individual Lists; Grand List.—The listers are required to arrange in alphabetical order an abstract of the individual lists of all the tax-payers, and lodge the same in the town clerk’s office, on or

before the twenty-fifth day of April in each year, and a person who feels aggrieved by the action of the listers, and desires to be heard by them, may notify the listers, or one of them, on or before the first Tuesday in May. But the listers in towns of less than two thousand inhabitants may make up such abstract by entering in the blank book, furnished by the secretary of state for the grand list of the town, the real estate and the appraisal of the same and the appraisal of the personal estate, as required by law, to be set in the grand list. After the first Tuesday in May, when all questions of complaint have been heard and determined, the listers shall complete said book as the grand list of the town. S. 427.

The listers of a town are liable in an action on the case for a neglect of duty whereby a person is improperly assessed and compelled to pay taxes in consequence of such assessment.—*Howard v. Shumway*, 13 Vt. 358.

The validity of lists when made in good faith is always upheld, if the errors complained of are only the result of mistakes of judgment. A lister's oath need not recite compliance with every detail of official duty; thus, it is presumed that the valuation relates to the time required by law, i. e., April 1.—*Brock v. Bruce*, 58 Vt. 261.

The legislature has power to pass a retrospective act legalizing a grand list which was irregular or invalid because the listers had only taken, but not *subscribed*, the preliminary oath required; and such list is admissible as evidence in an action to recover taxes assessed on that list, both before and after its legalization.

The act requiring listers to file an abstract of the personal list with the town clerk is mandatory; it must be signed, verified and authenticated by the listers in unmistakable manner, if not, the grand list is invalid and not admissible as evidence.—*Smith v. Hard*, 59 Vt. 13.

Abstracts of personal lists must be filed as the statute requires or the grand list will be invalid; the defect cannot be cured by legislative act, if the list is defective in matter of substance affecting the tax-payer's rights, e. g., where the name and list of defendant were omitted.—*Bartlett v. Wilson*, 59 Vt. 23.

An alteration of the list by the listers after the time provided for its completion, unauthorized by law, does not render the whole grand list void.—*Willard v. Pike*, 59 Vt. 202.

When the personal list is neither signed nor certified by the listers, and no minute of filing is made by the town clerk, it is invalid; and taxes paid under it may be recovered back.—*Bundy v. Wolcott*, 59 Vt. 655; *Smith v. Hard*, 61 Vt. 469.

The abstract of personal lists need not describe the property on each individual list, but only the total amount.—*Taylor v. Moore*, 63 Vt. 60.

The abstract of individual lists, required by V. S. 427, must include the real estate of the tax-payers, and the failure of the listers to file the same invalidates the whole grand list. Such failure deprives the tax-payer of his constitutional right to be heard, and the grand list cannot be made valid by a curative statute.—*Godfrey v. Bennington Water Co.*, 75 Vt. 350.

Hearing of Aggrieved Persons.—On the first Tuesday in May, the listers shall meet at some place appointed by them, and on that day, and from day to day thereafter, but not later than the twelfth day of May, they shall hear persons aggrieved by their appraisal or by any of their acts, until all applications are heard and decided, and correct the lists accordingly. When a person's list is made up under the provisions of

section 424, the listers shall have no power to reduce the same below the amount determined by them as therein provided. S. 428.

A notice by listers of the time and place of hearing persons aggrieved is good, if an omission of the hour of meeting does not cause any injury to the complainant.—*Smith v. Hard*, 61 Vt. 469.

It is not the duty of the listers to notify persons whom they assess for bank stock of the sum in which they are assessed and of the time and place when and where they will hear those who feel themselves aggrieved by such assessment. Hence the want of such notice does not vitiate the list of the person not notified.—*Clement v. Hale*, 47 Vt. 680.

Notice to persons assessed for money on hand, etc., must be given each year unless some legal reason exists for not giving it, or the assessment will not be valid.—*Dean v. Aiken*, 48 Vt. 541.

Appeals.—A person aggrieved by the decision of the listers may, within twenty-four hours thereafter, appeal to the board of civil authority, and shall notify the listers of his appeal and of the time appointed by the board for hearing the appeal. Said board shall hear and determine such appeals, and shall order the list to be corrected accordingly. But no hearing shall be held later than the fourteenth day of May. S. 429.

A person assessed appealed from the listers to the selectmen; an entry was made by one of the listers with the consent of the other vacating the assessment; no action being taken by the selectmen, the entry vacating the assessment held to be an error and the assessment restored.—*Fuller v. Gould*, 20 Vt. 643.

Selectmen cannot raise the assessment above the sum fixed by the listers; their power is limited to reducing the assessment or denying the relief asked for.—*Leach v. Blakely*, 34 Vt. 134.

List Completed; Oath.—On or before the fifteenth day of May, the listers shall complete and deposit the grand list in the town clerk's office, having first appended thereto the oath given in the statute.

And the grand list shall not be legal unless completed, sworn to and deposited in the clerk's office as provided in this section. S. 432.

When the time has elapsed and the list has been returned as completed by the listers to the town clerk, it then becomes the basis for taxation of the ensuing year, and neither the listers themselves, nor the selectmen, nor any other person, has any legal power to make any alterations in such list or to make additions thereto.—*Downing v. Roberts*, 21 Vt. 441.

The grand list does not become the legal basis of taxation until a majority of the listers have signed and sworn to a certificate thereon as required by the statute.—*Reed v. Chandler*, 32 Vt. 285.

The fact that the listers in signing and certifying the list made by them on one of the years intermediate between the years of general appraisal of real estate, used the form of oath required by the statute in the year of general appraisal, instead of that given for other years, does not vitiate the list.—*Blodgett v. Holbrook*, 39 Vt. 336.

Alterations in the list after it has been deposited in the town clerk's office by persons other than the listers do not make it void. It remains legal and valid as originally made and deposited.—*Bellows v. Weeks*, 41 Vt. 590.

A grand list not sworn to by the listers is not valid as a basis of taxation; and the legalization of such list by the legislature would not validate taxes previously assessed thereon.—*Tunbridge v. Smith*, 48 Vt. 648.

The appending to the grand list of the oath and certificate provided by statute, although necessary to the validity of the tax assessed upon such list, and

to be done before the assessment is made, need not be done before the list is lodged in the town clerk's office.—*Rowe v. Hulett*, 50 Vt. 637.

The validity of a list is always upheld where it appears to have been made in good faith and the only errors complained of were mistakes of judgment by the town officers. So where the listers neglected to set in the list \$500 in money but no intentional wrong was done or fraud attempted by them it was held that the list was not invalidated thereby.—*Wilson v. Wheeler*, 55 Vt. 446.

Two oaths by the listers are required to make the grand list valid—one the preliminary oath of office, filed with the town clerk, the other appended to the list in the language set out in the statute.

The latter certificate must be attached to the list of real estate.—*Walker v. Burlington*, 56 Vt. 131.

Where, in 1882, before the end of a quadrennial period, instead of adopting the appraisal of 1881 and using such a form as the statute contemplates for making an annual list, the listers appraised the real estate and used the form for making a quadrennial appraisal.—*List held invalid.—Clove Spring Iron Works v. Cone*, 56 Vt. 603.

Towns are required by statute to elect annually three, four or five listers, who constitute a board, a majority of which is essential to legal action; one acting alone has no jurisdiction; his acts would be void.—*State v. Peters*, 57 Vt. 86.

The law does not require the town clerk to minute the date of filing the personal list in his office. A list made in good faith upheld:—in case of erasures—the court assumed that the listers acted in good faith.—*Brock v. Bruce*, 58 Vt. 261.

Town Grand List, Contents.—The list when completed shall contain the following particulars:

- I. The name of each taxable person.
- II. The amount at which such person's poll is set in the list.
- III. The quantity of real estate owned by such person, specifying the class to which it belongs, and the village, school and fire district in which it is situated.
- IV. The value of such real estate.
- V. The value of such person's personal estate taxable in the town, after deduction made for debts owing.
- VI. The sum obtained by adding the poll, if any, to one per cent of the value of such person's real and personal estate.
- VII. The amount of deduction to be made from such person's list, if any, by reason of the exemption of his poll or other estate.
- VIII. The remainder after making such deduction, shall be the grand list of such person for the assessment of taxes. S. 433.

The law requires all the taxable property of the inhabitants of a town to be put into the list each year, and in this respect there is no difference between real and personal estate. Each list must be perfect in itself, without reference to any former list; and no taxes can be assessed against a person either for real or personal property, unless such property be inserted in the current list in force as the basis for taxation of that year.—*Downing v. Roberts*, 21 Vt. 441.

The appraisals and assessments which listers are commissioned to make are of a judicial character, and they incur no personal responsibility when not actuated by malice; but in regard to the other duties enjoined upon the listers their acts, for the most part, if not universally, are ministerial.—*Fairbanks v. Kittredge*, 24 Vt. 9.

Listers are liable for their omission of express and obvious matter-of-fact duties and for all other injurious misconduct in their office even in matters of discretion when it can be shown that they acted in bad faith.—*Stearns v. Miller*, 25 Vt. 20.

A school district may maintain an action against listers, if they designate any part of the property which belongs to and is taxable in their district as belonging to another district, so that the plaintiff district is deprived of the benefit of the list upon that property in the assessment of their taxes.

If such designation is wrongfully made, they will be liable if they refuse or neglect to correct it when requested by a special committee of the injured district, though no request be made by the prudential committee.—*School District v. Kittredge*, 27 Vt. 650.

The listers are bound to act in good faith in setting real estate in the list to owners or persons liable to pay taxes thereon, and with common care, skill and prudence, and if they so act, they are not liable for mistakes or inaccuracies; but, if not, they are liable to the party injured for the consequences of such mistakes, oversights, or inaccuracies.—*Wilson v. Marsh*, 34 Vt. 352.

Property consisting of several buildings connected together may be set in the grand list together under an appropriate name, or may be divided up, giving the value of each building by itself.

The statute requiring the listers to set in the list the quantity of real estate owned or occupied by the tax-payer, refers to farms and agricultural lands, not to small parcels used for buildings, where the value depends on mere location and business; but if not so set in the list, in either case, it does not render the list void or give any action against the listers or the town, without showing that the neglect has worked some loss or injury.—*Bellows Falls Canal Co. v. Rockingham*, 37 Vt. 622.

In a case where a tax-payer interlines the oath attached to his inventory with the words "To my best knowledge and belief," the listers rightfully refused to accept it. It is the duty of the tax-payer to take the oath formulated by the statute.—*Newell v. Whitingham*, 50 Vt. 341.

The act of the tax-payer was "wilful" though conscientious.—*Buchanan v. Cook*, 70 Vt. 168.

Where the listers used a form for making a quadrennial appraisal instead of the one for an annual list, *held*, that the list was invalid.—*Clove Spring Iron Works v. Cone*, 56 Vt. 603.

A slate quarry, leased for the purpose of manufacturing slate, should be set in the list of the lessor; and if set in the list of the lessee, the tax is invalid. Real estate, in the tax law, means land with its fixtures and accessories,—land, measurable and capable of description by metes and bounds.—*Hughes v. Vail*, 57 Vt. 41.

The last owner of real estate on the first day of April is liable for the taxes regardless of subsequent conveyances.—*Fulton v. Aldrich*, 76 Vt. 310.

Corrections After Return.—When polls, or real or personal estate are omitted from the grand list by mistake, the listers may, with the approval of the selectmen, before the first day of July, supply such omissions, correct the same, and make a certificate thereon of the fact. S. 434.

Alterations and additions, while they might render the listers liable, would not render the grand list void.—*Willard v. Pike*, 59 Vt. 202.

Amended List, Taxes Laid on.—Taxes voted and not assessed shall be assessed on such amended list; and where a tax has been assessed an assessment of the same per cent may be made upon additions to such list, and the collector shall collect the same as though it was in

the original tax-bill, and the warrant in such original tax-bill shall be sufficient authority therefor. S. 435.

When Lost, Listers Make New.—When the grand list of a town becomes lost or destroyed, the listers shall at once make a new appraisal of all taxable property in such town, and return the same to the office of the town clerk within sixty days from the appraisal of such taxable property, in the same manner as now provided by the Vermont statutes for appraisal of real and personal estate. Acts of 1896, No. 12.

Fire District List.—In a town where a fire district is organized after the listers of such town have completed their grand list, and in a town where a fire district has previously been organized, and the listers have neglected to designate the list of such fire district as provided by law, said listers shall, upon the application of three legal voters of such fire district, make such designation upon the grand list of the town, and such list shall be valid. S. 436.

School District Grand List.—The grand list of a school district shall be made up of the polls and real and personal estate taxable therein. S. 838.

A person resident in a school district on the first day of April, who is assessed as the owner of personal estate, and whose list is designated by the listers as belonging to such district, is liable to pay taxes in such district while such list continues in force, though he has removed from the district.—*Woodward v. French*, 31 Vt. 337; *Walker v. Miner*, 32 Vt. 769.

All property subject to taxation should, for school district purposes, be assessed and set in the list of the district within which it had its *situs* at the time, with reference to which the assessment should be made and not elsewhere.

But an error of the listers setting it (a farm set off to another district) would not be conclusive of the plaintiff's or the district's right if the town records furnished the necessary means of correcting it.—*Ovitt v. Chase*, 37 Vt. 196.

Where a party moves out of one district into another he becomes an inhabitant of that district for school taxation, even where he intends to return after two years to the first district.—*Woodward v. Isham*, 43 Vt. 123.

Where a town votes to set one school district onto another, it had power to rescind the vote and form a new district. A vote that the committee raise a tax on the grand list for school purposes is sufficient.—*Bill v. Dow*, 56 Vt. 562.

Transfer Book, Town Clerk to Keep.—Town clerks shall prepare for the use of the listers, a list of the transfers of real estate in the town, including mortgages, commencing on the second day of April, in each year, and ending on the first day of April in the following year, with the names of the grantor and grantee, the number of acres included in each transfer and, if a mortgage, the amount secured by each party to such mortgage, and such other information as they are able to give as to such transfers. S. 422.

The listers are justified in relying on the list of transfers furnished by the town clerk for their use and benefit.—*Wilson v. Marsh*, 34 Vt. 352.

Uniform Taxes.—Taxes shall be uniformly assessed on the lists of the persons taxed, unless otherwise provided by law. S. 467.

Year, What List Taxes go on.—State and county taxes assessed, and town, village, school and highway taxes assessed or voted on or after the first day of March in any year, and before the first day of March following, shall be assessed on the grand list returned to the town clerk's office in May of said year. S. 437.

All fire district taxes assessed or voted on or after the first day of January in any year, and before the first day of January following, shall be assessed on the grand list returned to the town clerk's office in May of said year. Acts of 1896, No. 14.

Taxes voted at an annual March meeting of any town must be assessed upon the list of May following, therefore, where a tax was voted at the annual town meeting holden in March, 1863, and by the same vote, the selectmen were directed to assess the tax upon the grand list of 1862, and it was so assessed, it was *held* invalid.—*Alger v. Curry*, 38 Vt. 382.

The vote of a tax after the first day of March cannot be a lawful vote of a tax upon the grand list, completed on fifteenth of May preceding, though it was expressly made so, and the fact that it was so made appeared from the records of the district; but the records failing to show such fact, it cannot be shown by parol.—*Capron v. Raistrick*, 44 Vt. 515.

In April, 1874, a school district, in order to pay a debt incurred before, voted to assess a tax on the list of 1872. *Held*, that under No. 8 of Acts of 1872, it should have been assessed on the list completed on May 15, 1874, and that No. 39, Acts of 1868, conferred no such right as the district assumed.—*Hassam v. Edwards*, 49 Vt. 7.

The statute provided that the selectmen should annually assess a state school tax previous to the first of January, but did not specify the list on which it was to be assessed. *Held*, on general principles of law, that it should be assessed on the list last completed and legalized by the legislature, November 18, 1882.—*Sprague v. Abbott*, 58 Vt. 331.

LOCKUP.

See "Selectmen."

LUMBER INSPECTOR.

One or more inspectors of lumber and shingles are elected annually at the annual town meeting. They are required at the request of any party interested to examine and classify the quality of lumber and shingles and to measure lumber and give certificates thereof; and for such services they receive reasonable compensation from the party requiring the same. S. 3064.

MILITIA.

All able-bodied, male citizens of this state between the ages of eighteen and forty-five years, with some exceptions, enumerated in the statutes, are liable to perform military duty, and are enrolled in the militia. The listers of each town make such enrollment at such time and under such regulations as the commander-in-chief prescribes, and in case of their neglect the commander-in-chief causes the enrollment to be made by other persons at the expense of the town. S. 4368.

MODERATOR.

A moderator is chosen annually, at the annual town meeting, to serve until the next annual meeting, and until another is chosen. S. 2980.

Duties.—The moderator is the presiding officer of town meetings, decides questions of order, and makes public declarations of votes as passed; and when a vote declared by him is immediately questioned by seven voters present, he is required to poll the voters, or divide the meeting, unless the town has provided some other procedure in such cases.

It is his duty to preserve order in the conduct of business, and in debate; and if a person, after a notice, is persistently disorderly and refuses to withdraw from the meeting, he may cause him to be removed, calling upon the constable or other person for that purpose, and confine him until the meeting is adjourned; and a person so refusing to withdraw when ordered so to do, shall be fined not more than twenty dollars to the use of the town. SS. 2996, 2997.

Town meetings are called to order by the moderator, or in his absence by one of the selectmen, and such selectman presides until a moderator *pro tempore* is chosen.

The selectmen may fill a vacancy in the office until an election is had. In local elections in towns, the moderator performs the duties of a presiding officer.

He signs the certificate of election of the town clerk required by law to be deposited with the clerk of the county. SS. 2977, 2988, 118.

MUNICIPAL CORPORATIONS.

The word “town” shall include city, and the words “selectmen” and “board of civil authority” shall extend to and include the mayor and aldermen of cities; and laws applicable to the inhabitants and officers of towns and their powers shall be applicable to the inhabitants and similar officers of all municipal corporations; but this section shall not be so construed as to conflict with acts of incorporation, or laws especially applicable to such municipal corporations. S. 19.

Executions Against.—When a judgment is rendered against a county, town, city, village, school or fire district, execution issues against the goods or chattels of the inhabitants of such corporation, and may be levied and collected of the same. S. 1808.

Any inhabitant whose goods or chattels are taken on such execution may, before their sale, pay to the officer the amount of such execution, and the charges thereon; and he shall be entitled to recover against the county, town, village, or district, the sum so paid or levied on his goods or chattels, with twelve per cent interest thereon. SS. 1811, 1812.

Indebtedness, Limit.—No city, town, incorporated village or other municipal corporation shall create an indebtedness in any manner, or for any purpose, except to refund any outstanding bonds or orders, to an amount in the aggregate exceeding five times the grand list thereof taken next preceding the incurring such indebtedness; *provided* that any city, town, incorporated village, or other municipal corporation may, by a two-thirds vote by ballot of the voters present and voting, at a meeting called for that purpose, increase such indebtedness an additional amount not exceeding five times such grand list, beyond said original limit.

All bonds or obligations in excess of the amount of indebtedness permitted by this act hereafter given or created by any municipal corporation, except as hereinafter provided, shall be void.

In determining the amount of municipal indebtedness permitted by section one of this act, any obligations created by any municipal corporation for a water supply, sewers and electric lights shall not be taken into account.

This act shall not apply to any municipality where provision is made in the charter thereof to limit the indebtedness of such corporation. Acts of 1904, No. 79, SS 1, 2, 3.

NUISANCES.

See "Health Officers;" "Selectmen."

OIL INSPECTOR.

The selectmen of the town, or the bailiffs or trustees of the village where oils are sold, upon petition of five or more inhabitants, appoint annually one or more suitable persons not interested in the sale of such oil as inspectors thereof, and fix their compensation, which shall be paid by the parties requiring their services. An inspector is required to be sworn and to act with reasonable dispatch when called upon by a vendor, purchaser, or any officer having authority, in the testing of such oils, by applying the fire test as indicated and determined by Tagliabue's pyrometer, or some instrument equally accurate. SS. 4710, 4711.

OVERSEER OF THE POOR.

Election; Term; Bond.—An overseer of the poor is chosen annually at the annual town meeting to serve until the next annual meeting, except that in towns having more than five thousand inhabitants, he may be removed by the selectmen for good cause, and, if not sooner removed, his term of office expires on the first Tuesday next after the annual March meeting. SS. 2980, 3040, 3041.

Like other town officers, if he refuses to serve or to be sworn on demand of the town clerk or a selectman, he shall be fined not more than ten dollars. S. 2991.

If the town so vote, he may be required to give a bond for the faithful performance of his official duties. S. 2994.

Accounts Kept; Inspection.—An overseer of the poor shall keep, in a book for that purpose, an itemized account of moneys received and expended by him, and debts incurred against the town. Such books shall at all times be open to the selectmen, and when completed shall be deposited in the town clerk's office subject to the inspection of the inhabitants of the town. S. 3039.

The statute makes it the duty of overseers of the poor to keep a particular and true account of all their expenditures for the poor.—*Cabot v. Walden*, 46 Vt. 11.

Accounts Presented Monthly.—Such overseer shall, in the account provided in the third preceding section, state for whom purchases have been made, and to whom property sold has been delivered. He shall at the end of each month present separate accounts, numbered consecutively, of all indebtedness contracted by him against the town to the selectmen, who shall, if found correct, draw orders therefor. Each order shall be numbered to correspond with the account which it is given to pay, and shall be countersigned by the overseer. The accounts kept by such overseers shall at all times be open to the inspection of the selectmen or their agents. S. 3042.

A book kept by the town showing the transactions of overseers of the poor, is admissible in evidence in favor of the town, to prove the facts of such expenditures. *Cabot v. Walden*, 46 Vt. 11.

Paupers, Town to Relieve and Support.—Every town shall relieve and support poor and indigent persons, residing or found therein, when they are in need thereof, as provided in this chapter. S. 3168.

Towns may, at their annual meeting, make provision for the relief and support of their respective paupers. S. 3170.

This statute is no part of the pauper law of the state. It is beneficial to the town of legal settlement, as it vests in the town the income of the insane person's estate above the support of the wife and children and enables the town to preserve the property and prevent the family from becoming paupers.—*Londonderry v. Babbitt*, 54 Vt. 455.

Care of.—The overseers of the poor shall have the care of poor and indigent persons, so long as they remain at the charge of their respective towns, and shall see that they are suitably relieved, supported, and employed, at the charge of the towns, either in the poor-house provided by the town, or in such other manner as the town directs, or otherwise at the discretion of the overseers; and the overseers shall take effectual

measures to prevent such poor and indigent persons from strolling into other towns. S. 3169.

Expenses incurred by an individual in support of a pauper, without the request of the overseer of the poor, cannot be recovered of the town in which the pauper has his legal settlement.—*Thetford v. Hubbard*, 22 Vt. 440.

A child six years of age was chargeable to the town of V. as a pauper. Plaintiff at a legal town meeting agreed with the town that he would board the child one year at a specified price. *Held*, that plaintiff had thereby gained the right to the custody of the child for the year and the overseer of the poor of the town had no authority to interfere.—*Houston v. Kimball*, 22 Vt. 575.

The law creating the office of town agent was not intended to take away the right of town officers, such as overseers of the poor, to employ counsel where needed for town matters within the scope and duties of their office.—*Burton v. Norwich*, 34 Vt. 345.

Towns are not liable for the unlawful acts of their overseers of the poor, when acting without the scope of their authority.—*Chelsea v. Washington*, 48 Vt. 610.

A putative father of a bastard gave a bond to the town chargeable with its support; judgment on the bond was obtained against him, which he settled, and he was authorized by the selectmen to take control of the child, which he did, and placed him in a charitable institution. In trespass by the child against the putative father, it was *held* that by virtue of his authority from the town, the father had a right to the custody and control of the child.—*Adams v. Adams*, 50 Vt. 158.

An overseer of the poor contracting with one for the support or labor of a pauper is not a party, but an agent of the town merely, and may make a valid settlement binding on the pauper.—*Billings v. Kneen*, 57 Vt. 428.

The promise of one related to a pauper, within the statutory degree, to indemnify the town of such pauper's residence, for the expenses incurred in his support, is valid, and the town can recover expenses incurred thereafter, in reliance upon such promise.—*Brandon v. Jackson*, 74 Vt. 78.

A town held liable for the services of a physician rendered to a poor person after a promise by its overseer of the poor to pay therefor.—*Farmer v. Salisbury*, 77 Vt. 161.

Selectmen Control When.—In towns, whose population by the last census taken, exceeded five thousand inhabitants, overseers of the poor shall be under the control and direction of the selectmen, and may, for good cause, be removed by them.

In such towns, the overseers shall receive such compensation as may be agreed upon between them and the selectmen, and, unless sooner removed, their term of office shall expire on the first Tuesday next after the annual March meeting. SS. 3040, 3041.

State Pays Expense in Certain Cases.—Overseers of the poor shall relieve and support poor persons for whose support no town in the state is liable, committed to jail on civil process while residing in their towns; and the expense shall be paid out of the state treasury, an account thereof having first been allowed by the state auditor. S. 3176.

Towns shall have the burden and benefit of guarding themselves against petty offenses and in case of arrest and imprisonment for vagrancy, a writ of mandamus was denied to compel a court auditor to audit a jailer's account against the state for keeping a person committed to jail under the vagrant act of 1864.—*Drew v. Russell*, 47 Vt. 250.

Actions For and Against in Town's Name.—An action given to an overseer of the poor, selectman, or town treasurer should be brought in the name of the town, and an action against those officers should be brought against the town. S. 3086.

A note made payable to the selectmen must be sued in the name of the town. Where a number of persons associated together for the purpose of killing wolves, loaned the bounty money received to an individual, taking a note payable to the selectmen of the several towns, *held*, that an action might be brought on the note in the name of the towns.—*Railroad v. Case*, 6 Vt. 165.

On a bond given to the selectmen conditioned for the performance of a duty for the town, an action may be sustained in the name of the town.—*Fairfax v. Soule*, 10 Vt. 154.

Apprentices.—The overseer of the poor may bind as apprentices, or servants, the minor children of a poor person who has become chargeable to the town, or who is supported there in whole, or in part, at the expense of the town, and also minor children who are themselves chargeable to the town. Such children may be bound until they become of age, or, if a girl, until marriage, before becoming of age; and such contract shall provide for teaching the children reading, writing, and arithmetic, and for such other instruction, benefit, and allowance as the overseer thinks reasonable. S. 2833.

It is the duty of the overseers of the poor to inquire into the treatment of children bound by them, or with their approbation, or of their predecessors in office, and to defend them from cruelty, neglect and breach of contract by their masters; and if a master is guilty of cruelty, or other ill-treatment, or neglect, or violation of the provisions of the law, or of the indenture, or contract, towards a person so bound to service, a complaint may be made by an overseer to the county court of the county in which the master resides, setting forth the circumstances of the case. SS. 2243, 2851.

Absconding Person, Guardian.—The overseer of the poor of the town where the wife or children of an absconding person are left, and are liable to become chargeable to the town, may present a complaint to the probate court, setting forth the facts and asking that a guardian be appointed. S. 2756.

Absent Person, Trustee Appointed.—If a person having a domicile in this state remains beyond the sea, or absents himself and is unheard of for three years; or if a person having such domicile disappears under such circumstances, as to lead the court to believe that he is lost, insane, or dead, the probate court of the district, on application of the overseer of the poor of the town of his last domicile, shall appoint one or more trustees of such person's estate. S. 2604.

Bastard Children.—The overseers of the poor are given the supervision, in certain circumstances of bastard children, and in the interest of the town in connection with them, of the mothers of such children.

They may commence a prosecution in the name of the child's mother, or control and manage a prosecution commenced by her, and conduct such cause to final judgment, and have all the rights of the mother and apply the moneys received for the support of the child. They shall not compromise such prosecution without the consent of the mother. S. 2724.

The overseer shall not commence or manage such prosecution until he files with the justice issuing the warrant, or with the clerk of the county court, under his hand, a certificate of his intention so to do, and that he will indemnify the mother of the child of future costs in the premises. S. 2725.

An overseer of the poor may carry on an action against the putative father of a bastard child in the name of the mother, though she may after the birth of the child marry and at the time of the prosecution of the suit be a *feme covert*, her husband joining in such prosecution by joining with her in the application for the warrant.—*Sisco v. Harmon*, 9 Vt. 129.

If the mother of a bastard child supports the child at her own expense until he becomes of age, she may recover the money paid to the town in settlement of a suit for bastardy with interest from the date of such settlement, as the town has had the use of the money from the time it was paid into the treasury.

The town is trustee of money so received for its specific purpose of applying it to the support of the child and the benefit of its mother.—*Drake v. Sharon*, 40 Vt. 35.

The right of the mother of an illegitimate child to prosecute the putative father under the bastardy act dies with her; nor can the town on which the support of the child may be cast prosecute after her death.—*Rollins v. Chalmers*, 49 Vt. 515.

The mother of the bastard child must be a party to the complaint on which a suit for bastardy is founded, and evidence of her declarations out of court is evidence in chief.—*Welch v. Clark*, 50 Vt. 386.

Cite Father Before Justice.—If a single woman, delivered of a bastard child, does not charge a person with being its father within thirty days after the child is born, as provided in this chapter, the overseer of the poor of the town charged, or likely to be charged with the support of the child, may make a written complaint against her to a justice of the county, setting forth the facts, and thereupon the justice shall issue his warrant to bring her before him to be examined upon oath. S. 2726.

The statute does not apply where the woman has, prior to her delivery, commenced a prosecution in her own name against the father of the child. In case of a discharge being given by the mother the only remedy for the town is to disregard the settlement and bring in the woman's name.—*Overseers v. Yarrington*, 20 Vt. 473.

A settlement with the mother, with the assent of an overseer of the poor of the town where she resides, is no defense to a prosecution by the overseer of the poor of the town where she has her legal settlement.—*Hale, Overseer, v. Turner*, 29 Vt. 350.

Proceedings.—When a single woman is brought before a justice he shall take her examination in writing under oath, and thereupon by his warrant cause the person charged by her with being the father of her bastard child to be brought before him. The same proceedings shall

thereafter be had in the name of such overseer, as though such woman had commenced the prosecution in her own name. S. 2727.

No compromise made with, or discharge given to, a person charged under the preceding section or made or given after the overseer has commenced a prosecution, or taken upon himself the control, or management of such prosecution, shall be valid as against the overseer, unless made with his consent. S. 2728.

In case the mother dies during the pendency of such prosecution, the overseer of the poor of the town charged, or likely to be charged with the support of the child, may prosecute the same to final judgment, in the name and for the benefit of the town. S. 2729.

If the mother of a bastard execute a release to the principal in a bail-bond given in a bastardy case, neither he nor his bail can avail themselves of it as long as the case is under the control of the overseer of the poor; but if the interest of the overseer ceases and the mother prosecutes the case for her own benefit, such release pleaded in bar is a good defense as to her. And if the town is not entitled to sums of money ordered to be paid, she cannot claim it against her release.—*Humphrey v. Kasson*, 26 Vt. 760.

The intermarriage of the mother of a bastard with the putative father puts an end to the suit against him for bastardy.—*Gordon v. Amidon*, 36 Vt. 735.

When Overseer's Powers Cease.—If such woman or other person gives sufficient security for the support of the child, and pays the costs and expenses for its support, the powers granted to the overseer by this chapter shall cease, and proceedings commenced by him shall be discontinued. S. 2733.

Dead Body Given for Science.—The overseer of the poor of a town is authorized in certain circumstances to deliver the body of any person who dies within such town, whose burial is likely to be at the public expense, to a practising physician, to be by him used for the advancement of anatomical science, upon conditions set forth in the statute. SS. 4641, 4642.

Insane Persons.—The overseer of the poor of the town in which an insane person who is a pauper resides, when such insane person is not placed in an asylum, shall keep him under such restraint as may be necessary to prevent his going at large. S. 3280.

The overseer of the poor may be notified by the selectmen that any insane person who is a pauper is going at large, to take charge of and restrain such person from going at large. If so notified, it is the duty of the overseer to restrain such person from going at large within the limits of the town, under penalty of a forfeiture for such neglect, or failure. SS. 3281, 3282.

Not Paupers, Care of.—In case the probate court upon application of the selectmen adjudges a person, not a pauper, insane and no person accepts the appointment or qualifies as guardian of such person within twenty days thereafter, the overseer of the poor of the town shall be

subject to the same duty and liable to the same penalty as though such person was an insane pauper. S. 3284.

And in such a case, if the overseer has had due notice of the proceeding, the decision of the probate court that such person is a pauper shall be conclusive against the overseer. S. 3285.

Prisoner, Ascertain Residence.—For the purpose of ascertaining such residence or proceeding against his relatives, the overseer of the town where an insane prisoner has ever dwelt or stayed, may proceed in court as if such prisoner on his discharge had come to reside in such town. S. 5251.

Marriage Certificate, Consent to.—A town clerk shall not issue a marriage certificate to a town pauper without the written consent of the selectmen or overseer of the poor of each of the towns where the parties reside, or which are liable for their support. S. 2637.

Notice to Town Liable.—No action shall be commenced under section 3174 by the town furnishing such support, until the overseer of the poor has given notice of the condition of such person to the overseer of the poor of the town of such person's residence, and such last-named overseer has neglected to provide for him for sixty days after such notice. S. 3175.

V. S. 3172 does not require notice that the alleged pauper has applied for assistance nor that assistance has been furnished, but only notice of the condition of such person or his family.—*Randolph v. Roxbury*, 70 Vt. 175.

Pauper Children, Clothe.—If it appears on trial that a child is not properly clothed for attending school, and that his parent is unable so to clothe him, the overseer of the poor shall furnish suitable clothes for the child; and if it appears that the parent or guardian is unable to control the child, and keep him in school, the justice, or court, with the consent of a majority of the selectmen, may sentence such child to the Vermont Industrial School. S. 717.

Pauper, Employ, or Bind Out.—The overseer of the poor may bind out to labor, or employ in the poor-house, any person residing in the town, who lives idly and pursues no lawful business, and who is poor and in need of relief from the town, or whose family is in need of such relief, or is supported by such town; and such overseer may take and appropriate his wages to the maintenance of such person or his family.

Such contracts shall be in writing and shall express the term such person is to serve, which shall not exceed one year, but may be renewed as circumstances require; and they shall be as valid as though the person bound himself.

The overseer may set to work or bind out as apprentices, as he thinks best, such minor children as are chargeable to his town, in the manner provided by law. SS. 3187-3189.

An indenture of apprenticeship is voidable merely on the decease of the master, and so of an assignment.

If the apprentice serves the administrator or assignee of the master, he acquires the rights and incurs the duties of an apprentice, and if he leaves the service he cannot avoid the indenture and recover for his services on a *quantum valebat*.

An apprentice bound by overseers of the poor is assignable without his assent. So, if the master die, he may be retained in the service of the administrator with the assent of the overseers.—*Phelps v. Culver*, 6 Vt. 430.

An order of a justice of the peace is not a prerequisite to authorize overseers of the poor to bind out poor children as apprentices.

Nor is it necessary in such cases that the child should be permanently chargeable to the town.

Such children may be apprenticed by the overseers to farmers as well as to tradesmen and mechanics.—*Warner v. Sweet*, 7 Vt. 446.

If an overseer in binding out to apprenticeship a child chargeable to the town, covenant that such child shall faithfully serve out the term, the town is not liable for a breach of such contract.—*Baldwin v. Rupert*, 8 Vt. 256.

An overseer of the poor acts as an agent of the town in contracting for the support of an insane pauper, and is not a party to the contract, and after his death, in an action by the pauper to recover pay for his labor, his employer under the statute may be a witness in his own behalf to prove a settlement with the overseer. The overseer has power to make a valid settlement binding on the pauper.—*Billings v. Kneen*, 57 Vt. 428.

Paupers; Relief; Residence.—If a person is poor and in need of assistance for himself or family, the overseer of the poor of any town shall, when application for such assistance is made, relieve such person or his family, and if he has not resided in such town for three years, supporting himself and family, and is not of sufficient ability to provide such assistance, the town so furnishing the same may recover the expense thereof from the town where he last resided for the space of three years, supporting himself and family, in an action for money laid out and expended. S. 3171.

Where a town exercises actual and exclusive jurisdiction over land, the residents thereon will be given a settlement in that town, notwithstanding the land is not within the chartered limits of the town, and evidence that the town has for more than seven years levied and collected taxes of a resident on such land, caused his children to be returned as belonging to one of its school districts, and allowed him to vote at its town meetings, is competent to show that the town has exercised such jurisdiction and will give the resident a settlement in the town.—*Reading v. Weathersfield*, 30 Vt. 504.

A constructive residence in Peacham was not broken up by arrest and imprisonment in another town.—*Northfield v. Vershire*, 33 Vt. 110.

A pauper having a settlement at I. did not lose it by repeated absences in Barton and other places where he went to get work, his actions not showing any settled purpose to take up his abode permanently in any particular place.—*Barton v. Irasburgh*, 33 Vt. 159.

A pauper of feeble mind resided with her brother in L. for more than seven years; her residence there was of such a nature and under such circumstances as to give her a legal settlement in L. under the statute.—*Ludlow v. Landgrove*, 42 Vt. 137.

If a town renders aid to a person in discharge of a duty that the town has assumed by contract and not in discharge of a duty imposed by statute, such aid will not prevent the person from acquiring a settlement in such town.—*Cavendish v. Mt. Holly*, 48 Vt. 525.

The law making it a duty of a town to support its poor is mandatory, and it is not an essential prerequisite to the giving of aid that there should be an application therefor.—*Weston v. Wallingford*, 52 Vt. 630.

Overseers do not act as agents but as principals in granting relief. Their decision to aid is a final adjudication. Parties contracting with overseers to

relieve transient paupers are under no duty to inquire whether they are exceeding their authority.—*Holloway v. Barton*, 53 Vt. 300.

Imprisonment in the state prison for a limited term of two years does not interrupt the legal residence of the prisoner under the pauper law when he has a family and home in a town, resides there at the time he is imprisoned, and the evidence shows a purpose on his part to continue such residence and return to it as soon as liberated.—*Baltimore v. Chester*, 53 Vt. 315.

Nothing is presumed when the question is which of two towns shall support a pauper. The report showing that the pauper's father was chosen, but did not show that he served in certain offices named in the statute, it will not be presumed that he served.—*Burke v. Westmore*, 55 Vt. 213.

A pauper must have sufficient mental capacity to form and have an intention and choice as to his abode, in order to acquire a legal settlement in a town to which he removes.—*Westmore v. Sheffield*, 56 Vt. 239.

The establishment of the legal settlement of an illegitimate child by order of removal unappealed from, fixes and determines the settlement of the child's mother in a subsequent proceeding.—*Pittsford v. Chittenden*, 58 Vt. 49.

A married woman with minor children, deserted by her husband and having a settlement in defendant town, but living in plaintiff town, applied to plaintiff town for relief, which was granted. She afterwards sold her effects and went to live in several towns, but gained no residence. On appeal from an order of removal from plaintiff town to defendant town, it was held that the aid was rendered to the wife as the head of the family, that she was constructively present when the order of removal was made, and was legally removed to the town of her settlement.—*Rockingham v. Springfield*, 59 Vt. 521.

When a child's intellect is impaired and she is incapable of exercising any choice in regard to her residence, she would not be emancipated on attaining her majority; and if she continued to reside in her father's family, she would take by derivation a settlement acquired subsequently by him. She would acquire a settlement for herself after seven years' residence in the town.—*Topsham v. Chelsea*, 60 Vt. 219.

Insanity *per se* occurring after legal residence has begun, which, uninterrupted, would ripen into a settlement, does not under the pauper law suspend or hold in abeyance such residence or affect the acquisition of a settlement, except so far as controlled by statute.

While under the statute the time spent in an insane asylum by an insane person is not computed in settlement cases, it is computed when the person is not in an insane asylum, though he is under guardianship.—*Topsham v. Williamstown*, 60 Vt. 467.

Where a child is weak of mind, so as to be incapable of taking care of itself, and has in fact always lived and been cared for in the father's family, the father, if able, is legally bound to support the child after it becomes of age, as before, and cannot require aid of the town so long as he has sufficient means himself. If in such case he applies to the town, the latter cannot be held on its promise to aid, the latter being without consideration.—*Rowell v. Vershire*, 62 Vt. 405.

Unemancipated minors living with their parents and supported in part or wholly by them, do not acquire residence by which a town can be charged with their support as paupers under the law of 1886.—*Marshfield v. Tunbridge*, 62 Vt. 455.

A pauper, born in 1852, lived with his father from 1869 to 1872 in Westmore, and from 1873 to 1877 in Barton, and never returned to Coventry to reside after 1869, when he left there with his father. Held, that he had no residence in Coventry in 1877.—*Barre v. Coventry*, 63 Vt. 95.

A town must support paupers resident.—*Chittenden v. Stockbridge*, 63 Vt. 308; *New Haven v. Middlebury*, 63 Vt. 399.

The liability of towns for support of paupers depends on residence *not* on settlements.—*Vershire v. Hyde Park*, 64 Vt. 638.

A pauper being cared for under contract in a neighboring town is a transient therein and a resident of the other.—*Leicester v. Brandon*, 65 Vt. 544.

To retain a residence within the meaning of the pauper law, there must be both a definite intention to return and a place to which the person has a right to return. So one who sells all his effects and removes to another town, leaving no place to which he can return, will lose his residence in the former town, although he has a definite intention of returning there at some future time.—*Jericho v. Burlington*, 66 Vt. 529.

Marriage emancipates a child even though a minor.

If one has a family and maintains himself and it, so that neither he nor they become chargeable upon any town for support for seven consecutive years in the same town, he acquires a residence there.—*Craftsbury v. Greensboro*, 66 Vt. 585.

A town in which a pauper has his residence whenever acquired is responsible to a town in which he is a transient for his support. But no recovery can be had for aid furnished before notice given to the overseer of the town to be charged.—*Woodstock v. Barnard*, 67 Vt. 97; *Sandgate v. Rupert*, 67 Vt. 258.

In order to charge a town with the support of a pauper under No. 55, Acts of 1892, it must be shown that the pauper has a residence in the defendant town in his own right.—*Fairfax v. Westford*, 67 Vt. 390; *Woodstock v. Barnard*, *Ibid.* 97.

A helpless pauper of full age, who resides in his father's family and is supported by him without aid from any town, is a resident of the town in which his father lives.—*So. Burlington v. Worcester*, 67 Vt. 411; *St. Johnsbury v. Waterford*, *Ibid.* 641.

The time of residence in a town before its organization cannot be taken as a part of the period required to gain a settlement.—*Rutland v. Proctor*, 68 Vt. 154.

The town in this state wherein the pauper last resided for three years is liable under the statute notwithstanding he afterwards resided out of the state. While a pauper in one town receiving support from another is by implication of law a resident in the latter, that implication ceases when he ceases to need and receive assistance, and from that time he begins to acquire a residence in the town where he may be.—*Granville v. Hancock*, 69 Vt. 205.

A divorced wife no longer takes the legal residence of the husband.—*Montpelier v. Elmore*, 71 Vt. 193.

A pauper who resides upon territory transferred by legislation from one town to another becomes a resident of the town to which he is transferred as regards his legal settlement.—*Westfield v. Coventry*, 71 Vt. 175.

The town in which a husband has acquired a three years' residence is charged with the support of his wife, who comes to want while living apart from him in another town. A husband's residence determines that of the wife.—*Mt. Holly v. Peru*, 72 Vt. 68.

If a town keeps one of its paupers in another town, the pauper is a resident of the supporting town.—*The Sheldon Poor House Association v. Sheldon*, 72 Vt. 126.

A daughter who by reason of feeble mindedness was unemancipated during the life of her parents, and remained incapable of choice or intention in respect to her residence, acquired no residence in her own right, and could have no derivative residence under the pauper law.—*Danville v. Hartford*, 73 Vt. 300.

A person cannot acquire a residence within the meaning of our pauper law unless he is *sui juris*.—*Jericho v. Morristown*, 77 Vt. 367.

Poorhouse, Furnish Materials.—A town which provides such a house may appoint, in town meeting, proper officers for the government of such house, and make necessary rules and regulations in conformity with law, for governing such persons as are committed thereto; and the overseer of the poor shall furnish necessary materials for setting such persons to work. S. 3195.

The overseer of the poor may manage and carry on under the direction of the selectmen, land in connection with the poor-house. S. 3194.

Master, Submit Register to.—The master of each poor-house shall keep a register of the names of the persons committed, and of the towns to which they belong with the time of their being received and discharged and of their earnings respectively, to be submitted to the overseers of the poor of said towns when they request it. S. 3207.

Transient Persons, Relief of.—If a transient person is suddenly taken sick or lame, or is otherwise disabled and confined at any house, in a town, or is committed to jail and is in need of relief, the person at whose house he is, or the jailer, as the case may be, shall be at the expense of relieving and supporting such person, until he represents his situation to the overseer of the poor of the town, or if the jailer to the overseer of the poor of the town from which he was committed to jail, after which the overseer of the town so notified shall provide for his support; and if the overseer neglects to provide for such support, the person so supporting him may recover therefor, in an action at law against the town so notified; and if such transient person is not of sufficient ability to defray the expense of his support, with the other contingent charges, the town defraying such expense may recover the same by an action for money laid out and expended, from the town in which such person last resided three years supporting himself and family. S. 3174.

A person committed to jail from another town and relieved by the town in which the jail is situate is within section 11 of the act providing for the poor, and no order for removal is necessary.—*Danville v. Putney*, 6 Vt. 512.

A person who goes into a town other than the one where his family resides and does actual work upon contract for labor is not, upon becoming sick or disabled, liable to an order of removal, but is to be regarded as a transient person within section 11 of the pauper act.—*Bristol v. Rutland*, 10 Vt. 574.

The right of one town to recover of another expenses incurred in the support of a pauper is not affected by the residence of the pauper during the pendency of the action.

Towns may recover of other towns the expense of maintaining a pauper in an insane asylum, unless it increases the expenses of maintenance.

Also for clothing destroyed by an insane pauper.

Towns may recover also from other towns for the support of paupers upon orders for removal, if not in excess of expense of keeping them in the town procuring the removal.—*St. Johnsbury v. Waterford*, 15 Vt. 692.

Where a transient person is taken ill, and is in need of relief, and the person at whose house he is notifies the overseers of the poor of the town in which he resides, and requests them to provide for the pauper, and the overseers request him to do what is necessary, he may recover for his services and expenses in taking care of the pauper in an action on book account against the town.

The acts of a majority of the overseers in this respect will bind the town.—*Wolcott v. Wolcott*, 19 Vt. 37.

Corporations may incur the same liabilities for their acts as natural persons.

Where two towns entered into a contract to support their paupers on a farm which they purchased for that purpose, and paupers were sent to the farm until the arrangement terminated by common consent; and the town of Fairfax neglected to remove the paupers sent there, and they were supported at the cost of the town of Sheldon, held, that Sheldon might recover of Fairfax the expense incurred in an action on the case.—*Sheldon v. Fairfax*, 21 Vt. 102.

In order to gain a legal settlement in a town by several years' residence, the residence must be the result of choice.

Where a debtor was committed to jail upon execution and gave a jail bond and was admitted to the liberties of the prison, and then removed his family to the town where the jail was situated, and continued to reside there for more than seven years, supporting himself and his family and paying taxes in the town, committing no breach of his bond, it was held that he had acquired no residence and that, being aided by the town in which the jail was situated, that town might recover the amount by it expended from the town where the debtor had his legal settlement at the time when he was first committed to jail.—*Woodstock v. Hartland*, 21 Vt. 563.

An order of removal unappealed from is conclusive evidence of the settlement of a pauper.

It is not necessary that a transient person should be literally suddenly taken sick, or lame, and be confined at some house in order to enable the town to recover the expenses from the town in which he has his legal settlement. The provisions of the statute apply to all transient persons who are in need of present relief.—*Charleston v. Lunenburg*, 23 Vt. 525.

In order to sustain a proceeding for the removal of a pauper, he must have gone to the town asking for the removal with the intention of remaining there or have formed that intention after arriving there.

If such be not the case, the proper remedy is an action of *assumpsit* for the support of a pauper as a transient person.—*Brownington v. Charleston*, 32 Vt. 411.

A declaration in *assumpsit* counting on the neglect of a town to provide for the support of a transient poor person brought by the person supporting him against the town in which he is found, is not supported by proof of express promise by the town to provide for support of the pauper, but by the statute liability of the town for neglect to provide for a transient person's support.—*Hove v. Royalton*, 32 Vt. 415.

The actual commitment to jail is sufficient to cast the duty upon the jailer and the overseers of the town where the jail is situated of providing for the relief of an imprisoned pauper, where he stands in need of relief, after proper notice given agreeably to the statute.

A settlement once established in a town is presumed to continue there until the contrary is shown.—*Newfane v. Dummerston*, 34 Vt. 184.

L. was arrested and thrown into jail in Chelsea for being found intoxicated in the town of Vershire. Held, that Chelsea could not be held liable for his support in jail, but that Vershire was directly liable for the expense of his support to the keeper of the jail.—*Chelsea v. Vershire*, 35 Vt. 446.

The defendant town being liable to a jailer for the support of a prisoner in jail is not relieved from liability by his negligent escape. After the prisoner returned the town was still liable for his support.—*Sanderson v. Rutland*, 43 Vt. 385.

An order for removal can be legally made only when the pauper has come to a town to reside, and cannot be made in the case of a transient pauper.—*Pittsford v. Chittenden*, 44 Vt. 382.

Where a pauper having a settlement in M. came to reside with plaintiff and was supported by him for years, it was his duty in order to relieve himself, either to leave the pauper with the overseer of the poor or obtain an order of removal to M., where the pauper had a legal settlement.—*Macon v. Berlin*, 49 Vt. 13.

Where a pauper works from place to place and at the time of receiving aid is working in the town, she will be considered a resident and not a transient person and subject to an order for removal.

There was no *animus revertendi* shown.—*Berlin v. Worcester*, 50 Vt. 23.

The overseer of the poor of a town in which a transient person is taken sick is bound to provide for the support of such person without regard to his ability to defray expenses, if such person needs relief. The question of the ability of such a person to defray the expense incurred arises as between the town rendering the support and the town in which the person aided is legally settled, after the support has been rendered.—*Danville v. Sheffield*, 50 Vt. 243.

The liability of a town under the statute for the support of a transient person suddenly taken sick depends not on such person's settlement, nor on his

transiency as distinguished from the permanency of having come to reside, but as to that, only on his being confined by disability at some house that is not his home.—*Goodell v. Mt. Holly*, 51 Vt. 423.

It was error for the court to charge the jury that plaintiff could not recover for anything furnished the pauper after defendant's overseer notified him that he would not pay therefor.

One may be a transient pauper, although his disability be not caused by a sudden visitation of disease or accident.—*Stone v. Glover*, 60 Vt. 651.

Towns must support resident paupers; such a pauper is not a transient person.—*New Haven v. Middlebury*, 63 Vt. 399.

Where a town contracts for the support of one of its paupers in a neighboring town, the pauper while living in that town is a transient therein and a resident of the former town; and the latter may recover of the former if compelled to assist the pauper.—*Leicester v. Brandon*, 65 Vt. 544.

An itinerant peddler who has no family and no home is not a transient pauper in that town where, while engaged in his ordinary vocation, he comes to want by reason of being suddenly taken sick.—*Londonderry v. Landgrove*, 66 Vt. 264.

PARKS.

See "Selectmen."

PAUPERS.

See "Overseers of the Poor."

PENT ROADS.

See "Selectmen."

"POLICE."

See "Selectmen."

POOR-HOUSES.

See "Overseer of the Poor."

POUND-KEEPERS.

A pound-keeper for each pound is chosen annually at the annual town meeting. S. 2980.

There shall be kept in each organized town at the expense thereof, one, two, or three good and sufficient pounds for the impounding of beasts liable to be impounded. S. 4764.

The duties of the pound-keeper are prescribed by law, and will be found in the statutes. SS. 4767-4788.

Replevin lies against the pound-keeper only for his own wrongful acts.—*Mattison v. Turner*, 70 Vt. 113.

ROAD COMMISSIONER.

Election; Powers.—A town is required to elect, by ballot, one or two road commissioners, at the annual town meeting. A town so voting may elect its road commissioner for three years.

When two road commissioners are so elected, the selectmen of the town, as soon as possible, divide the town into two highway districts, and cause a record of such division to be made in the town clerk's

office, such division not to be changed except by vote of the town, at its annual meeting.

Such road commissioners have the same powers, perform the same duties, and are subject to the same liabilities in their respective districts, as are now provided for road commissioners in their respective towns.

The selectmen apportion to each district such part of the state and town highway tax, and use of all road-making tools and machinery owned by the town as in their judgment seems best. SS. 2980, 2981.

Selectmen Not Eligible.—Selectmen shall not be eligible to the office of road commissioner. S. 3453.

Duties.—The road commissioner shall superintend the expenditure of the highway tax and take charge of and keep in repair the highways in his town, and shall be responsible to the town, for damages which may be sustained by it through his fault or neglect in the discharge of his duty; but when a road commissioner has expended the money appropriated by the town for the repairs of highways in his district and the amount thereof is found insufficient to complete the ordinary repairs of such highways he shall inform one of the selectmen of such insufficiency; but the town shall not be chargeable with expense for such ordinary repairs except that incurred under the direction of the selectmen, nor shall the road commissioner be liable to the town for damages occasioned by the want of ordinary repairs of the highways after giving the notice aforesaid, if the selectmen do not furnish means to complete such ordinary repairs. S. 3446.

Compensation.—The compensation to be paid the road commissioner shall be fixed in each town by the selectmen, at a sum not less than two dollars per day, for time actually spent, and shall be paid out of the highway fund. S. 3452.

Accounts.—Each road commissioner shall keep accurate accounts, showing in detail all moneys received by him, from whom, and when received, and all moneys paid out by him, to whom, and for what purpose, and settle the same on or before the first Tuesday in March, annually. S. 3450.

Bridge Repairs.—A road commissioner, when authorized by the selectmen, may take charge of and repair any bridge and its approaches, not over twenty feet in the clear between end abutments. Such authorization shall be in writing and recorded in the town clerk's office. S. 3447.

Draw Orders.—All money expended upon highways as provided by this chapter, except in cities and incorporated villages, shall be drawn from the town treasury upon the orders of said commissioner, and he shall keep a printed blank book of such orders, upon the stubs of which shall be a counterpart of the order so given. S. 3451.

County Boards.—The road commissioners of the several towns in the different counties constitute county boards of road commissioners, and meet on the first Tuesday in May in each year at the court house in each county (except that such meeting shall be at the town hall in Arlington in Bennington county), for the purpose of organization. S. 3448.

State Tax, Report.—Road and street commissioners shall, annually, make and swear to a report of the expenditure of the amount received from said state tax to the secretary of state, on or before the first day of February, and file a copy thereof with the town treasurer. S. 3449.

Incorporated Villages.—Nothing in this chapter shall be construed to affect the rights and powers now conferred on incorporated villages by their charters to elect or appoint street commissioners, and collect and disburse highway taxes. S. 3454.

SCHOOLS.

Town System Established.—Each town in this state shall constitute one district for school purposes, and the division of towns into school districts shall no longer exist except for the settlement of their pecuniary affairs, but their records shall be preserved by the town.

School districts incorporated by special acts of the general assembly, and school districts in unorganized towns and gores shall not be affected by this chapter, unless they vote to become part of the town district.

The voters in a district incorporated by a special act of the general assembly, shall not vote in town meetings for the officers of, nor upon any matter pertaining to, the schools of the town district.

A town shall take charge of the schoolhouses and the property belonging thereto, within its limits, and all debts outstanding that have accrued for the purchase of land, erection of schoolhouses and repairs thereon shall be audited and paid by the town.

Each town shall provide and maintain suitable schoolhouses; and the location and construction of the same shall be under the control of the board of school directors. SS. 664, 668.

Directors, Election; Vacancies.—Each town shall have a board of school directors consisting of three citizens of the town one of whom shall be elected at each annual meeting of the town and whose term of office shall be for three years or until a successor is elected.

Towns that now have six directors shall elect only one director each year who shall serve with the directors heretofore elected in said towns and the directors in said towns shall serve until the terms for which they were elected expire.

The selectmen may temporarily fill a vacancy in the board until an election is had and a record thereof shall be made in the town clerk's office. SS. 669-671.

Directors to be Sworn; Duties.—Directors shall be sworn and on or before the first day of April, annually, elect one of their number chairman.

The board of school directors shall have the care of the school property of the town and the management of its schools; shall keep school-houses suitably repaired and insured; shall determine the number and location of schools; shall employ teachers and fix their compensation by a majority vote; shall examine and allow claims arising therefrom, and draw orders upon the town treasurer for the payment thereof; shall have authority to designate the schools which shall be attended by the various pupils in the town; and make regulations not inconsistent with law for carrying the powers granted them into effect. SS. 672, 673.

District, a Corporation.—A school district legally organized, shall be a body corporate and politic with the powers of a corporation for maintaining schools in such district, and by its corporate name may sue and be sued, and may take, hold and convey real estate. S. 782.

In forming a new district, the old district continues to exist for the payment of debts incurred before it was united with the other.—*Needham v. School District*, 62 Vt. 176.

District, Officers; Election; Term.—A school district shall, at its organization, and at each annual meeting thereafter, elect from among the legal voters of such district a moderator, clerk, collector, treasurer, one or three auditors and a prudential committee of one person, unless the district shall vote to have a prudential committee of three, as provided in the succeeding section. Their term of office shall commence at the time of their election and continue until their successors are chosen, but if the prudential committee is absent more than three months from the district, his office shall be deemed vacant.

A school district may elect a prudential committee of three persons, one of whom shall be chosen for one year, one for two years, and one for three years; and until otherwise voted, such district shall, upon the expiration of the term of a member of such committee, elect a successor for three years, and may fill a vacancy. SS. 783, 784.

The records of a school district cannot be altered to meet a particular decision of the court on the trial of a cause.—*Hadley v. Chamberlain*, 11 Vt. 618.

If a school district meeting be duly warned by the clerk without an application to him in writing for that purpose and is held pursuant to the warning, it will be legal and valid.—*Mason v. School District*, 20 Vt. 487.

When a school district has once decided that its prudential committee shall consist of one person, it cannot, during the year for which the committee is elected, alter such determination, unless a vacancy occurs in the office.—*George v. School District*, 20 Vt. 495; *Chandler v. Bradish*, Ibid. 416.

A school committee can be annually elected only at the annual meeting on the last Tuesday of March. A failure to elect a committee does not create a vacancy.—*Rowell v. School District*, 59 Vt. 658.

The proceedings of a school district meeting were not void because the clerk failed to record the warning, in accordance with St. 1888, No. 131.—*Adams v. Sleeper*, 64 Vt. 544.

Duties.—The duties of school district collectors, treasurers and auditors shall be like those of town collectors, town treasurers and town auditors. A district collector or treasurer shall, before entering upon his duties, if required by vote of the district or by the prudential committee, give a bond to the district conditioned for the faithful performance of his duties, in such sum as may be required; and if a collector or treasurer neglects for ten days to give a bond as required, such office shall be vacant. S. 791.

A school district collector need not be sworn.—*Brock v. Bruce*, 58 Vt. 261.

The power to use not exceeding twenty-five per cent of the school money for the transportation of scholars to and from school is discretionary with the school directors, and their action in that respect cannot be controlled by mandamus.—*Carey v. Thompson*, 66 Vt. 665.

High Schools, Maintenance.— Every town may, and any town containing twenty-five hundred inhabitants, according to the latest public census taken by the authority of the United States, shall, besides the instruction provided for in the common schools, either establish and maintain a high school to be kept by a teacher or teachers of competent ability and good morals who, in addition to the branches of learning taught in the common schools, shall give instruction in English literature, higher mathematics, the sciences, political economy, civil government, general history, and rhetoric and may give instruction in Latin and Greek languages, modern languages and other advanced studies, or such town shall provide at the expense of the town such instruction for its advanced pupils in the high school, seminary or academy of some other town in the state. S. 700.

Incorporated Schools, Academies.— A town having an incorporated graded school or academy which provides the instruction herein required need not make the provision named in the preceding section but shall secure the instruction in said high school or academy of all scholars resident in the town district whose proficiency will permit thereof, if they desire such instruction and shall pay a reasonable sum to said incorporated school or academy as tuition therefor, and it is hereby required that such incorporated school or academy receive such pupils from the town district and give to them every advantage in instruction received by pupils resident in said incorporated district or attending such academy. S. 702.

Prudential Committee, Duties.— The prudential committee shall have the care of the schoolhouse and grounds, and shall keep the same in good order, and, if there is no schoolhouse, shall provide a suitable place for the school, also fuel, furniture and all things necessary for the school. S. 792.

The prudential committee shall employ and may, when necessary, re-

move a teacher and shall adopt requisite measures for the inspection, examination, regulation and improvement of the school. S. 793.

The prudential committee has the right to occupy the schoolhouse while the school is in operation, but the statute, or implications growing out of the general power of such committee, does not give him the exclusive control of the schoolhouse. That power is in the district.—*Chaplin v. Hill*, 32 Vt. 528.

The prudential committee of a school district is its general official agent and the proper person to see that means are provided to pay the school teacher hired by him. A payment by him of the wages of a teacher out of his own private funds is a good defense by the district against a claim for payment made subsequently.—*Edison v. Sprout*, 33 Vt. 77.

If a prudential committee agrees to let a party have a district schoolhouse for a private school during a vacation of the usual district school and the party acts upon the agreement, the committee cannot revoke it without cause, nor plead want of legal authority to make it, in an action of trespass against him for forcibly preventing the party from continuing his school during the period agreed upon.—*Russell v. Dodds*, 37 Vt. 497.

The custom of a school district to apportion the wood for the school to the scholars, and to sell the right of furnishing the deficiency, if any, to the lowest bidder, was not binding upon the prudential committee, and he might furnish the deficiency himself and charge the price to the district. The prudential committee may compromise and pay a claim for blackboards which plaintiff had allowed the district to use until one of them was worn out.—*Norton v. School District*, 37 Vt. 521.

A prudential committee has full authority and power as a matter of law to dismiss a teacher, but it should be for just cause, or the contract will continue operative and binding upon the district.—*Holden v. School District*, 38 Vt. 529.

A school committee can bind the district for a teacher's board, although the district voted at the annual meeting that the teacher should "board around in proportion to the grand list."—*Brown v. School District*, 55 Vt. 43.

A prudential committee can make a contract for the services of a teacher that will lap over a reasonable time upon the official election of his successor. The committee's power to contract is not derived from the district but comes from the statute.—*Chittenden v. School District*, 56 Vt. 551.

The vote of a school district instructing a committee to hire a school teacher is not obligatory but merely advisory.—*School District v. Harvey*, 56 Vt. 556.

A prudential committee can bind his school district for the expenses of a term of school which the district has not voted to maintain.—*Cobb v. Pomfret*, 63 Vt. 647.

The prudential committee of one school district has no authority to contract with an adjoining district for the instruction of the scholars of the former, unless authorized by a vote of his district in accordance with the provisions of the law.—*School District No. 4 v. School District No. 2*, 64 Vt. 527.

Superintendent, Appointment.—Boards of school directors shall on or before the first day of April annually appoint a town superintendent of schools and fix his compensation, and shall within ten days thereafter file a certificate of such appointment in the town clerk's office for record. S. 615.

One who is not a voter in town meeting is not eligible to the office of superintendent of schools.—*School District v. Brown*, 55 Vt. 61.

Attendance, Compulsory.—A person having the control of a child between the ages of eight and fifteen years, shall cause such child to attend a public school at least twenty-eight weeks in a year, and such

attendance shall be continuous, beginning with the school year, unless the child is mentally or physically unable to attend, has already acquired the branches required by law to be taught in the public school, or is otherwise being furnished with the same education.

If a child is a pupil of a school held for more than twenty-eight weeks in a year, he shall attend such school during the time it is to be held in excess of twenty-eight weeks unless he is mentally or physically unable to attend or is excused in writing by the school directors from attendance during the whole or a part of such time. A child under eight years, or a youth of over fifteen years of age, who shall begin attendance and be enrolled as a pupil in a public, elementary or high school, or a school in which his tuition is paid at public expense, shall attend such school during the term for which he is enrolled unless he is mentally or physically unable to attend or is excused in writing by the school directors from attendance during the whole or part of said term. S. 711.

Patriotic Exercises.—The last half-day's session of the public schools before Memorial day shall be devoted to exercises commemorative of the history of this nation during the war of the Rebellion and to patriotic instruction in the principles of liberty and the equal rights of man. S. 684.

Location of Schools.—Schools shall be located at such places, and held at such times as in the judgment of the board of directors will best subserve the interests of education and give all the scholars of the town equal advantages so far as practicable; the board of directors may use, and shall use on the written application of ten resident tax-payers of the town, a portion of the school money, not exceeding twenty-five per cent thereof, for the purpose of conveying scholars to and from school, whose residence is one and one-half miles or more from the schoolhouse. S. 685.

Taxes in Support of Schools.—The selectmen shall, annually, appropriate for school purposes a sum not exceeding one-half, nor less than one-fifth, of the grand list of the town district, and shall assess a tax to meet such appropriation. Any town district may by special vote raise a larger sum for school purposes. S. 734.

State Tax.—A tax of five cents on the dollar shall be annually assessed upon the grand list for the support of public schools.

The state treasurer shall apportion to the several towns, cities, and unorganized towns and gores such tax, according to their respective grand lists, and on or before the last day of December, annually, make out and transmit to each town and city treasurer and to the collector of taxes for unorganized towns and gores, a notice of the amount so apportioned, and the same must be paid into the state treasury on or before

the tenth day of the June next following; and the state treasurer shall also issue and transmit, at the same time, to the collector of taxes for unorganized towns and gores his warrant for the collection of the same.

The commissioners of taxes in unorganized towns and gores shall upon the receipt of such notice and warrant assess a tax for the amount specified and cause the same to be collected in the manner prescribed by law, and paid into the state treasury according to such notice and warrant. A town or city treasurer shall, upon receipt of such notice, transmit the same to the selectmen or mayor who shall draw an order on the treasurer of the town or city for the amount of such tax, and the treasurer shall pay the same to the state treasurer out of any moneys belonging to the town or city; if the funds in the hands of such town or city treasurer are not sufficient to pay the tax the selectmen or mayor shall borrow the necessary amount upon orders.

The state treasurer shall, on or before the tenth day of July, annually, divide the money in the state treasury received on such tax, among the towns, cities and unorganized towns and gores, in proportion to the number of legal schools sustained the preceding school year, which sum shall, in unorganized towns and gores be divided equally among the several school districts which have sustained a legal school the preceding year, and in towns having a district incorporated by a special act of the general assembly, such fund shall be divided as is hereinafter in this title provided by law for the division of school money. Such money shall be divided by the selectmen of each town on or before the fifteenth day of September annually. SS. 758-760, 762.

A tax to defray the expenses of a school is illegal which is in unreasonable excess above the amount voted by the school district.—*Rowell v. Horton*, 57 Vt. 31.

School Year.— In every town there shall be kept for at least twenty-eight weeks in each year, at the expense of said town, by a teacher or teachers of competent ability and of good morals, a sufficient number of schools for the instruction of all the children who may legally attend all the public schools therein; and all pupils shall be thoroughly instructed in good behavior, reading, writing, spelling, English grammar, geography, arithmetic, free-hand drawing, the history and constitution of the United States, and in elementary physiology and hygiene, with special reference to the effect of alcoholic drinks and narcotics on the human system, and shall receive special instruction in the geography, history, constitution and principles of the government of Vermont. S. 683.

The requirement by the teacher of a district school that the scholars in grammar shall write English compositions is a reasonable one, and if a scholar without a request from his parents that he may be excused from so doing, refuses to comply with such a requirement, he may be expelled from school on that account.—*Guernsey v. Pitkin*, 32 Vt. 224.

Text-books.—The school directors, or school board of each town, city or graded school district shall provide and furnish at the expense of such town, city or graded school district all appliances, supplies and text-books used in the studies enumerated in section 683 and may provide and furnish text-books on subjects enumerated in section 700, to be paid for by order of the directors on their respective treasurers. S. 769.

Sealers of Weights and Measures.—The duties of a sealer of weights and measures are performed by the town treasurer. S. 4292.

See "Town Treasurer."

SELECTMEN.

Election; Term of Office.—At the annual meeting towns choose from among their inhabitants three, four or five selectmen to serve until the next annual meeting; and until others are chosen, unless otherwise provided by law. S. 2980.

In towns of less than four thousand inhabitants the law requires that they shall be elected by ballot upon request of three voters present. They are sworn before entering upon their duties. SS. 2983, 2989.

Civil Authority, Board.—The selectmen are members of the board of civil authority. S. 59.

Ineligibility to Offices.—A selectman shall not be first constable, collector of taxes, town treasurer, lister, road commissioner or auditor. S. 3026.

Vacancies, How Filled.—The town at a special meeting may fill a vacancy in any town office.

The selectmen may fill a vacancy in any town office until an election is had. C. 139, SS. 2987, 2988.

The refusal of a highway surveyor to execute a receipt for a tax-bill does not vacate the office. The selectmen cannot make a new appointment to a town office unless a vacancy occurs in one of the modes specified in the statute.—*Cummings v. Clark*, 15 Vt. 653.

Powers and Duties in General.—The selectmen shall have the general supervision of the affairs of the town, and shall cause duties required by law of towns, and not committed to the care of any particular officers, to be duly performed and executed. S. 3016.

Selectmen cannot without a vote of the town for that purpose discharge the interest of a witness so as to render him competent.—*Angell v. Pownall*, 3 Vt. 461.

Where a note was given to the selectmen of three towns and prosecuted to final judgment in the name of said towns, under the direction of a special agent appointed by one of said towns, and the money was collected and paid to said selectmen by the sheriff, *held*, that selectmen were not authorized to receive the money and discharge the sheriff.—*Railway v. Rood*, 7 Vt. 125.

It is within the scope of the implied powers of the selectmen to protect the interests of the town by employing counsel in road cases, when the town

agent employs none and makes no objection to the employment by the selectmen. Assent of the town is presumed when no dissent shown.—*Burton v. Norwich*, 34 Vt. 345.

Notice to a majority of the selectmen or treasurer of the assignment of a town order, is sufficient to prevent its attachment by creditors of the assignor in a trustee process.—*Thayer v. Lyman*, 35 Vt. 646.

The selectmen of a town have power to settle and stop a suit to recover a penalty for not removing an obstruction out of the highway under an order of the selectmen. The vote of the town "to direct the town agent to manage the lawsuits as he thinks best" would not limit the general authority of the selectmen over the subject.—*Cabot v. Britt*, 36 Vt. 349.

Selectmen have control of an invalid tax-bill: when a collector, having received a tax-bill, as collector, advanced and paid into the treasury the amount of the bill and when its illegality was discovered by the selectmen, they instructed him not to enforce collection, and promised to repay him what he did not collect by voluntary payment, it was held that the promise was binding on the town, and that the payment by the collector was not under the ban of voluntary payment.—*Miles v. Albany*, 39 Vt. 79.

Selectmen may submit to arbitration claims against a town growing out of insufficiency of highways and the town will be bound by the award.—*Hollister v. Pawlet*, 43 Vt. 425.

The selectmen of a town are not personally liable for an injury sustained through a defect in a public highway. Their duties in reference to highways are quasi-judicial.—*Daniels v. Hathaway*, 65 Vt. 247.

Case for negligence of defendants, trustees of a village, with the duty of maintaining the public streets. Held, that a municipal officer is not liable to a private individual for the result of an act which is strictly within his official powers and duties.—*Bates v. Horner*, *Ibid.* 471.

A contract with selectmen as such is enforceable against the town.—*Grand Isle v. Kinney*, 70 Vt. 381.

Selectmen offering without authority a reward for the arrest and conviction of one removing a body from its grave in a cemetery, do not bind the town or themselves.—*Spafford v. Norwich*, 71 Vt. 78.

Accounts.—They shall keep a record of accounts allowed by them and orders drawn and shall present it to the annual town meeting with a general statement of the property and finances of the town. *Ibid.*, S. 3021.

Successor; Records Delivered.—When the office of a selectman becomes vacant from any cause and a successor is elected or appointed, he shall on demand be entitled to receive the records, files, books and papers of such office or property of the town belonging thereto from the last incumbent of the office or any one having possession of the same. S. 3061.

Allow Claims.—They shall audit and in their discretion allow claims against the town for money paid or services performed for the town, and draw orders on the treasurer for the amount. S. 3020.

The selectmen have power to submit to arbitration such claims against the town as they are authorized to audit and adjust; and the town will be bound by the award made in pursuance of such submission.—*Dix v. Dummerston*, 19 Vt. 262.

Annual Settlement of Accounts.—Selectmen and other town officers and all persons authorized to receive or disburse moneys belonging to a town, shall, annually, settle their accounts with the auditors of such

town on or before the first Tuesday in March. If any such officer refuses or neglects to make such settlement in any year he shall be ineligible to re-election to the same office for the year ensuing. S. 3062.

Action to or Against Town Officers.—Actions given to the selectmen shall be brought in the name of the town; actions against them shall be brought against the town to which they belong. S. 3086.

A note made payable to the selectmen must be sued in the name of the town.—*Middlebury, etc., v. Case*, 6 Vt. 165. So on a bond.—*Fairfax v. Soule*, 10 Vt. 154.

Adoption, Minors.—In certain cases, the instrument of adoption may be signed, sealed and acknowledged on the part of the minor by the first selectman of the town in which the minor resides. S. 2857.

Apprentices, Care of.—Selectmen shall inquire into the treatment of the children bound by them or with their approbation or that of their predecessors in office and defend them from cruelty, neglect and breach of contract on the part of their masters. SS. 2851, 2843.

Auctioneers' Licenses.—Selectmen are authorized to license in writing one year or less, one or more persons to be auctioneers in their town; and a person so licensed shall pay to the use of the town not less than one dollar, nor more than one hundred and fifty dollars; but the selectmen may revoke such license when in their judgment the public good requires. S. 4744.

The words of the auctioneer that "everything should be as represented or no sale," held to apply to a mare represented to be sound.—*Bailey v. Manley*, 77 Vt. 157.

Ball Playing Prohibited.—The selectmen shall upon petition in writing of five legal voters of the town, if in their opinion the public good so requires, post notices in two or more public places, forbidding ball playing within limits and for a length of time specified in such notice; such notices shall be posted within the limits named. S. 4870.

Beasts, at Large.—Persons are forbidden to allow knowingly cattle, horses, sheep, or swine to run at large in the public highway, yard of a public building, or upon any public park or common, without the consent of the selectmen. S. 4789.

If the owner of a horse or his son kept all the time so near it that it would not wander about the highway, and would and did go directly back to the owner's premises, or to his son, it was not running at large within the meaning of the statute.—*Russell v. Cone*, 46 Vt. 600.

Bells, Whistles, Gongs Regulated.—A person employing workmen may for the purpose of giving notice to them, ring bells or use whistles or gongs of such size and weight, and in such manner and at such hours as the selectmen of towns may in writing prescribe. S. 4699.

Billiard-tables, Bowling-alleys.—The selectmen of a town, when in their opinion the public good requires, may, and on the petition in

writing of a majority of the voters of such town shall, forbid the use of any public bowling-alley or billiard-table in such town for any play or game, and shall notify in writing the owner or keeper of such billiard-table or bowling-alley that the same is forbidden to be used, and shall lodge a certificate thereof, describing therein such billiard-table or bowling-alley, in the office of the clerk of the town.

They shall also upon the like petition revoke any certificate and lodge the certificate of revocation with the town clerk and they may permit such table and alley to be used under regulations to be prescribed by them. SS. 4865, 4867.

A village charter authorizing it to "suppress and restrain all descriptions of gaming" repeals by implication an earlier statute empowering the selectmen to permit or forbid the use of billiard-tables. The grant of power to restrain gaming confers the right to license billiard playing.—*In re Wm. H. Snell*, 58 Vt. 207.

Bill Posting.—Persons are forbidden to print, paint, or post bills, placards, or notices upon a bridge, tree, post, fence, or other erection on a public common, without the previous consent in writing of the selectmen of the town. S. 5015.

Births and Deaths, Registry Fees.—On presentation of a certificate by the town clerk of a return of births and deaths to the selectmen, they shall draw an order on the town treasurer to pay such clerk fifteen cents for each birth or death returned. S. 2870.

Blind, Indemnity Bond for Expenses.—The selectmen of a town are authorized and empowered to execute on behalf of the town, without a previous vote, the bond which may be required to be given by the town to indemnify the state against expenses which may accrue in consequence of the sickness, clothing or transportation of the deaf, dumb and blind beneficiaries from such town. S. 861.

Bonds of Town officers.—It is their duty to require the constable, road commissioner, school directors, collector of taxes, treasurer and clerk, before entering upon their official duties, and in towns voting to require the overseer of the poor to give such bond, each to give bond to the town in sufficient sums and with sufficient sureties, conditioned for the faithful performance of their duties; and if they at any time judge any bond to be insufficient, they may in writing require the officer whose bond is insufficient to give an additional bond in such sum as they deem necessary.

Each of the bonds referred to shall upon its acceptance and approval by the selectmen, be at once filed by them for record in the town clerk's office, and shall be recorded by him in a book to be kept by him for that purpose. S. 2994.

The suit upon a constable's or collector's bond is a cumulative remedy. In assigning a breach the various circumstances of the tax, time of payment, to

whom, etc., must be averred. As to the state tax, it is a bond of indemnity to the town and in their suit they must make an averment of the state tax.—*Middlebury v. Nixon*, 1 Vt. 232.

A constable derives his official powers from his election and the statute defining them, and he is not required to give bonds until the selectmen of the town specify the amount, name the sureties and request the execution of the bond, and he can execute the duties of his office until those steps are taken and the request made.—*Bowman v. Barnard*, 24 Vt. 255.

A constable-elect may legally act as such until his office is vacated by the selectmen on his refusal to execute a bond to their satisfaction.—*Langdon v. Railroad*, 29 Vt. 212.

To disqualify a constable on account of his not furnishing bail there must be not only a definite demand of bail by the selectmen, but also a peremptory refusal to allow him to proceed with his official duties either in the present tense or after a certain limited period of indulgence.—*Bank of Middlebury v. Railroad*, 30 Vt. 159.

One legally elected constable and who serves as such, though he has neglected to give a bond, the selectmen not having required it, is a *de facto*, if not a *de jure*, officer, and the sureties on his bond, given several months after his election, are liable for his delinquencies prior to the execution of the bond.—*Weston v. Sprague*, 54 Vt. 395.

The fact that an instrument is written in the form of a bond but not under seal and executed by one elected constable does not occasion a vacancy in office.—*Wilson v. Wheeler*, 55 Vt. 446.

The fact that a bond was given by a collector of taxes may be shown by parol.—*Taylor v. Moore*, 63 Vt. 60.

If a first constable neglects for ten days after request by the selectmen to furnish an official bond, the supreme court will render judgment of ouster against him upon an information *quo warranto*. In computing the ten days the day of request is included. Delivery of the bond to the town clerk is a good delivery to the town.—*State ex rel., etc., v. Buchanan*, 65 Vt. 445.

Uncollected taxes are no bar to one's re-election as constable and are no defense to an action on his bond, nor is the fact that unpaid taxes of former years were included in the tax-bill collected and not paid over by the constable.—*Pawlet v. Kelly*, 69 Vt. 398.

Bridges, Petition for.—When a bridge is required between two towns and the selectmen of the towns do not agree to build the same, application by petition may be made to the county court by the selectmen of either town, and the petition and citation may be served on one or more of the selectmen of the other town. S. 3350.

Burial-Grounds.—A town may by vote take any or all of its burial-grounds out of the charge of the cemetery commissioners, and place them under the charge of the selectmen. The selectmen may make necessary regulations concerning such grounds and for fencing and keeping the same in order. SS. 3583, 3599.

The selectmen under the statute can make all necessary regulations, and convey lots by deed.—*Pierce v. Spafford*, 53 Vt. 394.

Alteration; Enlargement.—When three or more freeholders of a town apply to the selectmen in writing, setting forth the necessity to establish a new burial-ground or to enlarge an old one, with a description of the land necessary for the purpose, the selectmen shall thereupon proceed as in case of an application to them to lay out a highway. S. 3607.

Clear Up.—The selectmen are authorized, upon the written request of three tax-payers of the town, to clear up the walks and grounds and to replace in position headstones and other monuments, and may draw orders on the town treasury for the expense incurred by them to an amount not exceeding fifty dollars in any one year. S. 3584.

Convey Lots.—When a town neglects to place one or more of its public burial-grounds in charge of cemetery commissioners, the selectmen shall have the same power given by law to such commissioners to sell and convey lots in such grounds, and may apply the proceeds of such sale and accept for the town, and use legacies, bequests and gifts for improving and embellishing the grounds. S. 3589.

Grading.—When it becomes necessary and the public good requires that a burial-ground or cemetery be raised or a portion thereof filled up with gravel or earth, and the association owning the same cannot agree with the owner of gravel, or earth, near such burial-ground or cemetery for its purchase, the selectmen upon written application of three or more owners of lots in such burial-ground, or cemetery, shall inquire into the same; and if, in their opinion, such necessity exists, they shall authorize such association to take and remove gravel or earth, and use the same for such purposes, and appraise the damage to the owners thereof. S. 3608.

Fence, Neglect; Indictment.—If the selectmen neglect to keep in repair the fence around a public burial-ground in their town, the town may be indicted for such neglect by the grand jury of the county; but no town shall be so indicted unless the selectmen had notice twenty days previously in writing that the fence was out of repair. SS. 3586, 3588.

Remove Bodies.—In cases where it is impracticable to preserve a burial-ground in proper condition, and the removal of the remains of the dead therein is required by a proper respect to the memory of the deceased, the selectmen or cemetery commissioners may in their discretion cause such remains to be removed and interred in a more suitable public burial-ground. But such remains shall not be so removed if there are known kindred of the deceased residing in the state, until after thirty days notice of the intention so to do, and sixty days notice shall be given if kindred are known to reside without the state. SS. 3591, 3592.

Circus Exhibitions and Menageries.—The selectmen may permit exhibitions in their town of living animals and other natural curiosities for not more than two days at a time, and of a circus, upon the payment of the fees prescribed by law. But permission to exhibit a circus shall not be granted until the exhibitors pay to the state treasurer the license required, and exhibit such license to the selectmen. If during the exhibition of the circus, the selectmen are satisfied that it disturbs

the public peace, they may notify the exhibitors, in writing, that the license is revoked.

The word "circus" for the purposes of this act means a company of performers, with their equipage, traveling from place to place, and exhibiting or parading in the open air or under canvas, entertainments, consisting principally of feats of horsemanship, acrobatic displays and the exhibition of wild animals, or any two of these features. SS. 4873, 4874.

Coasting.—The selectmen shall forbid coasting upon the highways, when it endangers the lives or property of travelers, and shall post notices to that effect in two or more conspicuous places in the vicinity, but such prohibition shall not apply to highways in villages or cities having regulations in respect to coasting. S. 4871.

Collector, Additional Bond.—Whenever the bond of a collector of taxes, in the judgment of the selectmen, shall become insufficient, they may require in writing an additional bond, in such sum and with such sureties as they deem necessary. C. 30, S. 532.

Collector, Delinquent, Extent against.—When a collector is delinquent and an extent is issued against the town, the selectmen shall immediately make a tax-bill sufficient to pay the sum due, with the costs which may arise, and deliver the same to a collector of the town, other than the collector so delinquent, to collect; if there is no such collector, to such collector as they appoint; and such collector shall have the same power and be accountable in the same manner as collectors of town taxes. SS. 516, 531.

Collector, Disabled.—When a collector of town taxes is unable from sickness or otherwise to discharge his duties, and taxes are uncollected on a tax-bill held by him, the selectmen, at the request of such collector, shall certify such disability on the warrant for the collection of such taxes, and in such certificate authorize and direct the then collector, or in default of any such collector, shall appoint a person to collect and pay over such taxes. S. 530.

Where a collector has permanently removed from the town the selectmen may appoint a person to collect and pay over taxes unpaid to the proper authority.—*Clement v. Hale*, 47 Vt. 680.

Constables, Special.—They may appoint special constables, when necessary to preserve the peace or for the security of life and property. SS. 3024, 3025.

Dogs; Killing, Warrant.—The chairman of the selectmen annually within ten days from the twenty-fifth day of July transmits a certificate, subscribed and sworn to, of the fact of the issue of such warrant, and whether the same has been duly executed and returned to the state's attorneys of their respective counties, who shall prosecute such town officers as fail to comply with the provisions of this chapter. S. 4835.

Damages.— The selectmen are charged with the duty, when informed by the person injured, of investigating complaints of damages inflicted upon domestic animals by dogs. They are required to appraise such damages, and, if they find that the damages exceed twenty dollars, they appoint two disinterested persons to make the appraisement. This duty is usually performed by one of their number, to whom the information has come, and he assists the appraisers in the performance of their duty. They issue their warrant to a constable or police officer, commanding him to forthwith kill the dog, or dogs, wherever found, whenever they have to their satisfaction identified the dogs that have inflicted the damage. SS. 4836, 4837.

The selectmen annually in the month of December examine the bills for such appraisements, and, if found correct, issue an order upon the treasurer of the town in which the damage was done, for all or any part thereof, as justice requires; and transmit to such treasurer the aggregate amount of such orders issued by them. S. 4839.

Drains, Ditches, and Watercourses.— Selectmen may lay out, establish, construct, or cause to be constructed and maintained, a drain, ditch, or watercourse leading from any highway in their town, across the lands of any person to a watercourse, to carry away the surface water from such highway, or other drainage necessary for public health, if they judge the public good or the necessity or convenience of individuals require the same. S. 3420.

Hearings.— Before such drain, ditch, or watercourse is laid out and established, the selectmen shall give notice to the persons owning or interested in such lands, of a time and place at which a hearing will be held upon the question of laying out and establishing such drains, ditches, or watercourses, and of the damages caused thereby. S. 3421.

Damages.— If upon a hearing the selectmen order the laying out and establishment of such drain, ditch, or watercourse, they shall award damages to the owners of the land, and cause their order and award, with a survey and description of the drain, ditch or watercourse, to be recorded in the office of the clerk of the town within ten days thereafter. And the town shall construct and maintain it in good and sufficient repair until discontinued. SS. 3422, 3423.

Decisions.— All questions in relation to the opening of a ditch or watercourse in cases of dispute, shall be submitted to the selectmen for their examination and decision; and the selectmen, upon notice and a hearing, shall determine and decide all such questions submitted to them, and apportion the ditch or watercourse among the several parties, and decide what time each party shall have to open his share of the ditch or watercourse. SS. 3638, 3639.

Drainage Decisions in Writing.— Every decision of the selectmen shall be in writing, signed by a majority of them, and they shall lodge it, or

a certified copy thereof, in the town clerk's office, and the clerk shall keep it on file; and they shall deliver a copy to the parties interested; and such decision shall be binding on the parties. S. 3643.

Appeals.—Where appeals are taken from the decisions of the selectmen to the county court, the appellant shall enter into a bond, with sufficient sureties, in such sum as the selectmen may require, that he will prosecute his appeal and pay intervening damages and costs, in case the decision is affirmed. S. 3644.

A municipal corporation is liable for negligent construction of its sewers, but not for defects in plan or method.—*Willett v. St. Albans*, 69 Vt. 330.

A town which acquires territory by legislative act is not liable to a person injured by falling into an unguarded and unlighted ditch, dug for the purpose of removing water pipe laid within such territory.—*Stockwell v. Rutland*, 75 Vt. 76.

Report and Judgments Recorded.—A certified copy of the report of the selectmen or commissioners, finally accepted by the county court, with the orders and judgments in said court, shall be recorded in the town clerk's office where the lands are situated. S. 3647.

Discontinuance of Drain.—Ditches and watercourses opened under the provisions of this chapter may be discontinued by the same proceedings and under the regulations provided for opening the same. S. 3651.

Elections, Check-lists.—The selectmen are required, at least thirty days before a freemen's meeting for the election of state and county officers, to make an alphabetical list of the persons qualified to vote in such meeting. The lists contain the name of each voter, the street and number of his residence, and against the name of each person who has not resided in the town three months next previous to the freemen's meeting for which the list is made, it is stated that he is disqualified to vote for town representative and justices.

And in every town of more than four thousand inhabitants, and other towns on petition in writing of twenty or more voters, they are required to make a check-list of persons qualified to vote, at least thirty days before the annual town meeting. These lists are posted in two or more public places in the town, and copies are filed in the town clerk's office. SS. 67, 76.

In making a check-list of voters, the annual assessment list, which is completed and the last one preceding the time of making the check-list, governs.—*State v. O'Hearn*, 58 Vt. 718.

The check-list used at a special meeting need not be posted longer than the notice of the meeting.—*Willard v. Pike*, 59 Vt. 209.

Checking Officer.—The town clerk or his deputy, or in their absence, one of the selectmen shall, in towns where there are not over fifteen hundred names on the check-list, check the names of persons voting on such list or a certified copy thereof, by making a mark opposite each name for each vote cast, so as to indicate the officers voted for. S. 121.

Duties When Clerk is Disqualified.—At general elections, when the town clerk is a candidate for town representative, all the duties imposed upon him or his assistant are performed by one of the selectmen, or, in their absence, by a justice. S. 123.

Elections, Warnings.—The constable, or in his absence, the town clerk, or in his absence, a selectman, shall, in each town, not less than twelve, nor more than twenty days before the day of each biennial state election, and not less than six nor more than fifteen days before the day of each election of electors, post a notice in writing in three public places in the town warning the freemen of the town to meet on the day of such election, at the usual place of holding freemen's meetings, to elect the officers to be chosen on that day; and such meeting shall be called at ten o'clock in the forenoon in towns whose population does not exceed two thousand, and at nine o'clock in the forenoon in towns of larger population. S. 111.

In towns of more than four thousand inhabitants, annual or special meetings for the election of town officers shall be warned to meet at nine o'clock in the forenoon. S. 112.

Warnings Recorded.—All warnings of meetings for elections are recorded in the office of the town clerk before being posted. S. 110.

But such recording is not essential to the validity of the votes at the meeting.—*Adams v. Sleeper*, 64 Vt. 544.

Escheats.—When a person dies intestate seized of real or personal property, leaving no heir or person by law entitled to the same, the selectmen of the town where the deceased last resided, or of the town where he had estate, may in behalf of the town file a petition with the probate court of the district for an inquisition in the premises. S. 2549.

Fences, Built at Railroad's Expense.—If a person or corporation owning or operating a railroad does not construct and maintain a fence as required by this chapter, any person aggrieved may construct it; and the selectmen of the town in which the same is located shall appraise the value thereof, and the railroad company shall pay the amount so awarded by the selectmen to the person so aggrieved. S. 3875.

Fences, Winter.—In case a fence has been laid down in winter by a road commissioner, the selectmen, if requested by parties interested, upon notice to all such parties, may hold a hearing and assess reasonable damages, caused to any person by taking down and putting up the fence, and draw orders on the town treasurer therefor. And in case they judge that any highway is liable to be obstructed by snowdrifts caused by the fences adjoining such highway, they may contract with the owner to remove any portion of the same, or to build wire fences in their stead, and allow him reasonable compensation therefor. SS. 3404-3406.

Snowdrifts.—The selectmen may, on application in writing of three or more freeholders of the town, and on notice to the owner or occupant of the land, cause fences to be built and maintained on land adjoining a highway which they judge is liable to be obstructed by snowdrifts, which may be prevented by the building of a high fence thereon. S. 3407.

They shall assess reasonable damages for the erection and maintenance of the fence, and pay or tender the same to the owner or occupant of the land. S. 3408.

Unnecessary Fence a Nuisance.—No person shall erect or maintain an unnecessary fence or other structure, more than six feet high for the purpose of annoying the owners of adjoining property by obstructing their view or depriving them of light or air; and the selectmen, if the owner thereof fails, after twenty-four hours notice from them, to remove such fence or structure, may enter and remove the same at the owner's expense. S. 4697.

Fences, Who Shall Maintain.—The selectmen, on being called on by either of the owners of adjoining unimproved and unoccupied lands, and on reasonable notice by them to parties interested, shall decide whether such owner shall make any part of the division fence between such lands, and shall receive for their services the fees of fence viewers. S. 3568.

The acts of 1853 and 1857 had reference to fences between adjoining owners. Where no such conditions exist, one must restrain his own animals and pay damages for mischief done when they run at large.—*Wilder v. Wilder*, 38 Vt. 678.

Plaintiff's horse was injured by defendant's bull. *Held*, that plaintiff should have had a sufficient fence and was therefore damaged by his own neglect.—*Scott v. Grover*, 56 Vt. 499.

It is the duty of a farm tenant to keep his fences in repair; if they are not so, it is his fault, not the landlord's. An action cannot be maintained against the landlord by an adjoining landowner whose colt escaped through an insufficient fence, strayed onto a railroad track and was there injured.

Adjoining owners may make a parol agreement for division fences that will bind them and their grantees, if acquiesced in by them.—*Blood v. Spaulding*, 57 Vt. 423.

Ferries Established.—The selectmen of a town in which it is necessary to keep ferries shall meet annually, before the tenth day of April, at such time and place as is agreed upon, or is appointed by the first selectman, and designate proper persons and places for ferries, and shall lay out and cause suitable highways to be made to and from the same, and establish the tolls to be received at such ferries. S. 3534.

When towns lie opposite each other, and adjoining a river, creek, pond or lake, the selectmen of such towns shall meet for such purposes; and the first selectmen of either of the towns may appoint the time and place of meeting, and give notice thereof to the other selectmen. S. 3535.

Ferryman, Neglect By.— If a person accepting the appointment to keep a ferry neglects for one month to provide and keep in repair such ferry boats as in the judgment of the selectmen appointing him are suitable for the ferry, he shall forfeit his right to keep the ferry, and the selectmen shall appoint another person. S. 3537.

Fish and Game Wardens.— The selectmen may appoint and remove at pleasure fish and game wardens who shall be residents of the town. S. 4570.

When the appointment of a fish and game warden is revoked, a written notice shall be given to such warden and a copy thereof filed in the office of the clerk of the town where he resides. S. 4572.

Fire Inquest.— If a selectman is informed that a building, pile of wood, lumber or bark, or any other property in the town has been wilfully and maliciously set on fire or burned, a majority of the selectmen may, if the public good requires, apply to a justice of the county, who shall inquire into the cause of said fire and the manner in which it was set, and the property burned. S. 4717.

Forest Fire Warden.— The first selectman in each town shall be forest fire warden in and for his town. It shall be the duty of the forest fire warden of a town in which a forest fire is discovered to take such measures as may be necessary for its prompt control and extinguishment. For this purpose he may call upon any person in the town for assistance, and persons so assisting shall be paid by the town at the rate of fifteen cents per hour. But no town shall be held liable in any year for an amount greater than five per cent on its grand list for the purpose of extinguishing forest fires.

The fire wardens shall keep a record of all acts done by them under this law, of the amount of expenses incurred, of the number of fires, their causes, the areas burned over and the character and amount of damage done by forest fires in their jurisdiction. Once a year, during the month of January, they shall report to the state forestry commissioner these facts on blanks to be furnished by him. Acts of 1904, No. 16.

Glanders.— It is the duty of the selectmen when informed that a horse afflicted with glanders, or any other malignant disease, has been watered at any public trough, or fed, or offered at any public stable to be hitched with other horses, to cause such horse to be killed at the expense of the owner. Acts of 1904, No. 153.

Guide Posts, Report to Town Meeting.— The selectmen shall submit to the town at every annual meeting a report of all the places in which guide posts are and ought to be erected and maintained within the town. For each refusal to make such report they shall severally be fined ten dollars. S. 3088.

Highway Districts.— When two road commissioners are elected the selectmen of the town shall as soon as possible divide the town into two

highway districts, and shall cause a record of such division to be made in the town clerk's office, such division not to be changed except by vote of the town at its annual meeting.

The selectmen shall apportion to each district such part of the state and town highway tax, and use all road-making tools and machinery owned by the town as in their judgment seems best. S. 2981.

The trustees of the defendant village destroyed plaintiff's mill and dam during a freshet to prevent the river from washing out the highway. *Held*, that the defendant was not liable.—*Aitken v. Village of Wells River*, 70 Vt. 308.

A municipality may insist upon the lowering of the water in a pond, without compensating the owner of the power, for the purpose of repairing a bridge. Such interference with the use of the power is not the taking of the property within the meaning of the constitutional provision which requires compensation to be made.—*East Montpelier v. Wheelock*, 70 Vt. 391.

In removing obstructions from a highway, selectmen may use necessary force.—*Chase v. Watson*, 75 Vt. 385.

Light Covered Bridges.—They may cause covered bridges or a highway to be lighted, when the safety or convenience of the public requires it. S. 3023.

Highways and Bridges; Lay Out.—The jurisdiction, powers, and duties of selectmen with reference to highways and bridges extend to both the laying out, alteration, and discontinuance of them, and also to their maintenance and repairs. The laying out, alteration and discontinuance of highways will be first considered.

The law provides that the selectmen shall, as the convenience of the inhabitants and the public good require, lay out, alter, and discontinue highways; and pent roads shall be deemed highways. S. 3288.

Highways, except cross roads, lanes used as pent roads, and when laid within an incorporated village or city, to connect existing highways, shall not be less than three rods wide. S. 3289.

If highways have been laid out of less width than the present law, or the public convenience requires, the selectmen may lay out, widen and open the same. S. 3290.

They may upon petition for that purpose lay out the highway across a stream as a ford way. S. 3291.

The questions of how far the public good or the necessity of individuals may require a road, or how many persons live on a road, etc., are all matters of fact to be decided exclusively by the commissioners and the county court.—*Paine v. Leicester*, 22 Vt. 44.

Towns are bound to keep pent roads in a reasonable state of repair, taking into consideration their character and importance; and are liable for injuries arising from their not being in such a state of repair.—*Loveland v. Berlin*, 27 Vt. 713.

Ornament and improvement of grounds about a public building may be taken into consideration and regard in connection with the convenience and necessity of a proposed highway, but do not alone constitute a sufficient basis for establishing it.

If the county court does not proceed to consider and determine the case upon its merits (upon a report by commissioners), a party aggrieved may have his remedy in the supreme court.—*Woodstock v. Gallup*, 28 Vt. 587.

A highway may be laid out and established in one town solely on the petition of residents of that town, although only the land and premises interested in the construction of it are situated in an adjoining town.—*Gilman v. Westfield*, 47 Vt. 20.

Where the trustees of an incorporated village raised the grade of a highway, the selectmen had nothing to do with the filling, though they knew it was being made. *Held*, that this fell far short of effecting such a legal alteration of the highway as to bind the town.—*Penniman v. St. Johnsbury*, 54 Vt. 306.

Selectmen may lay out a pent road for winter use over one man's land to another man's wood lot, although it is laid for the special convenience of the owner of such lot. The road may end at the farm line of such owner instead of being extended to his buildings. When notice has been given and a party appears before the selectmen on a question of laying out a highway and makes no objection to the sufficiency of the notice, he waives the objection.—*Brock v. Barnett*, 57 Vt. 172.

No. 16, Act 1884, does not authorize the laying of a lane less than three rods wide, to be used without gates and bars, for such a lane is an open highway and not a pent road.—*Bridgman v. Hardwick*, 67 Vt. 132.

Under the charter of a village, the town alone can be compelled by order of court to lay out and open a highway within the limits of the village.—*Landon v. Village of Rutland*, 41 Vt. 681, affirmed *Mason v. St. Albans*, 68 Vt. 67.

Monuments; Records.—When a highway is laid out, or altered, a survey thereof shall be made and each termination of the survey marked by a permanent monument, or boundary, or referred by course and distance to some neighboring permanent monument, and other boundaries shall be established in a similar way; and the survey shall describe the highway by courses, distances and width, and describe such monuments and boundaries. S. 3292.

The neglect of the authority establishing a road to prescribe its width excuses the town from the liability for not opening and working the same.—*State v. Leicester*, 33 Vt. 653.

Resurvey.—If the survey of a highway has not been properly recorded, or the record preserved, or if its terminations and boundaries cannot be ascertained, the selectmen may resurvey the same, and make a record thereof in the office of the clerk of the town. S. 3294.

The right to straighten a highway is given impliedly to selectmen, with that of widening and resurveying it. No record is necessary of the alteration or opening of the road as straightened. Land vacated by discontinuance of a road reverts to the owner of the soil, who may maintain trespass against any one who thereafter unnecessarily travels on it.—*Closson v. Hamblett*, 27 Vt. 728.

To a proceeding for the resurvey and establishment of a highway any person owning lands through which such highway runs is a proper party. No such proceeding can be maintained unless it appears that the highway in question had been previously laid out and surveyed.—*Trudeau v. Sheldon*, 62 Vt. 198; *La Farrier v. Hardy*, 66 Vt. 200.

When selectmen resurvey a highway, thereby establishing the original boundaries, there is no appeal to the county court. The remedy by petition and appointment of commissioners applies only when the road has been laid out or altered. There is no claim for damages where a party has built fences on a highway since the statute of 1858.—*Hogaboon v. Highgate*, 55 Vt. 412.

The selectmen may, under section 2920, resurvey a highway whose boundaries and termini cannot be determined, provided the fact of the original survey be established.—*Culver v. Fair Haven*, 67 Vt. 163.

Under Vermont Statutes, section 3294, selectmen may resurvey a highway when the original survey thereof has not been recorded, or when its terminations and boundaries can only be approximately ascertained.—*Adams v. Derby*, 73 Vt. 258.

Highways on Petition; Hearing.—Three or more freeholders in a town desiring to have a highway laid out, altered, or discontinued, may apply by petition in writing to the selectmen for that purpose. S. 3295.

The selectmen shall thereupon appoint a time for examining the premises and hearing parties interested, and give notice thereof to one or more of the petitioners and to persons owning, or interested in land through which the highway may pass, of such time and of the time when they will consider claims for damages. S. 3296.

In laying out a way through lands of an intestate the administrator, and not the heirs, is the only person entitled to notice of the hearings before the commissioners. Damages awarded should go to the administrator, as such, and payment to him will preclude any claim by the heirs.—*St. Albans v. Seymour*, 41 Vt. 579.

Trespass quare clausum. The record showed that the selectmen heard "all parties interested as the law requires." *Held*, that plaintiff could not now object to the notice given him; that he could not attack the proceedings collaterally; that the omission to file a certificate in the town clerk's office that the highway was open for travel was immaterial, since the alleged trespasses were committed in working the highway before such certificate could have been properly filed.—*Robinson v. Winch*, 66 Vt. 110.

In laying out and altering a highway, selectmen may act on their own motion.

Failure to give notice of the time and place of the hearing on the question of damages, etc., does not render the proceedings of the selectmen, in laying out the highway, void, if the landowner has due notice of the hearing or is actually heard on the question of public convenience and necessity.

The determination of the latter question is preliminary to the jurisdiction of the selectmen in the matter.—*La Farrier v. Hardy*, 66 Vt. 200.

Selectmen, before laying out a highway, must give the landowner an opportunity to be heard on the primary question of the necessity of the highway, or their proceedings will be void as to him. Ejectment cannot be maintained against a town for possession of land taken for a highway; because possession by the town cannot be shown, the town does not dispossess the owner.—*Lynch v. Rutland*, 66 Vt. 570.

Survey.—If the selectmen, after examining the premises, and hearing the parties, judge that the public good, or the necessity or convenience of individuals requires such highway to be laid out, or altered, as claimed in the petition, they shall cause the same to be surveyed; and if they decide to discontinue a highway, such discontinuance shall be in writing, setting forth definitely such highway. S. 3297.

A highway may be discontinued without any previous notice to landowners across whose land the road lies.—*Haynes v. Lassell*, 29 Vt. 158.

The precise words of the statute, "lay out," are not essential in an application to the selectmen, and the adoption of a recorded survey by the selectmen is a sufficient compliance with the statute; nor is the case affected by a failure to follow the statutory requirements as to width of the highway or to make its *termini* certain.—*Winooski Lumber Co. v. Colchester*, 57 Vt. 538.

A road which begins and ends upon lands of a single individual, does not connect with or intersect any other highway, is not accessible to any other

person without trespassing upon the lands of such individual, and is not required by the public good nor the convenience and necessity of any other person but him, is not a public highway.—*Snow v. Sandgate*, 60 Vt. 451.

Return; Damages.— The selectmen shall return the original petition with a full report of their doings, with such survey or discontinuance, to the office of the clerk of the town, to be kept on file therein. S. 3298.

If they judge that a person through whose land such highway is laid or altered, is entitled to damages, they shall pay or tender to him such damages as they deem reasonable before the highway is opened. S. 3299.

Where a public highway is laid out over a private road, so as to convert it into a public thoroughfare, the landowner is entitled only to such damages as are actually done him by the taking.—*Prince v. Braintree*, 64 Vt. 540.

Obstructions.— When they lay out, or alter a highway, they shall in their order fix the time within which the owner of land taken shall remove his buildings, fences, timber, wood, or trees, which time, without his consent, shall not be less than two months, and not less than six months if the lands taken have buildings thereon, nor until compensation for damages is paid, if the sum fixed by the selectmen is accepted, or damages are awarded by referees. S. 3300.

The omission of selectmen, in laying out a road, to specify a time for the landowner to remove his fences, timber, wood and trees will not affect the validity of their acts, but will at most make them responsible to the landowner for damages, if any are sustained.—*Kidder v. Jennison*, 21 Vt. 108.

Possession Taken.— If a highway is laid out, or altered, the selectmen may take possession of the land, within the surveyed limit thereof, at any time after the expiration of the time fixed by the selectmen or county court, for the removal of buildings, and other obstructions, and may remove obstructions therefrom, and lay such lands open for working and travel, if they have previously paid or tendered to such landowners the damages awarded to them. S. 3301.

Removal of Walls.— When selectmen lay out or widen a highway, and a considerable portion of the damages to owners of lands consists in the removal of walls, or fences, and persons desiring such change in the highway offer to remove such walls, or fences and reconstruct them upon the line of the proposed highway, only reasonable damages shall be awarded to such owners, exclusive of the expense of the moving such walls or fences. S. 3302.

Where a public highway is laid out over land on which a private owner had previously built a private way, the only damages he can recover will be such as he suffers by the taking, and can get no compensation for his previous labor.—*Prince v. Braintree*, 64 Vt. 540.

Town's Expense.— Highways shall be laid out, made and repaired, and damages to landowners paid, by the town in which such highways are situated, except as otherwise provided by law. S. 3287.

Certificate of Opening.— When such highway is completed and opened for the use of the public, the selectmen shall make a certificate of that fact, which shall be recorded in the office of the clerk of the town; and the day on which such certificate is recorded shall be the time of opening such highway. S. 3303.

The certificate of the selectmen that the road is opened cannot properly be made till after the road is made.— *Patchin v. Doolittle*, 3 Vt. 457.

When a new road is established, any town through which it passes may immediately make it, and it then becomes the duty of the selectmen to open it; and when opened they must cause a certificate thereof to be recorded in the town clerk's office; until this is done the owner of the land may lawfully keep it inclosed with a fence and no one has a right to remove the fence.— *Patchen v. Morrison*, 3 Vt. 590.

Pent roads laid by selectmen are required to be opened by them, and their certificate thereof is to be recorded.— *Warren v. Bunnell*, 11 Vt. 600.

An owner through whose land a public road has been laid out by the selectmen cannot legally begin proceedings for the assessment and recovery of damages before a justice of the peace, until after the selectmen have left in the town clerk's office a certificate (for record) that the road has been opened.— *Emerson v. Reading*, 14 Vt. 279.

A certificate of the selectmen lodged with the town clerk for record is the legitimate evidence that the road has been opened and devoted to public use.— *Blodgett v. Royalton*, 14 Vt. 288.

Selectmen may agree with the owner of land on the amount of damages to be paid him before opening a road through his land, and draw an order therefor. An owner is not precluded from claiming damages by reason of a parol agreement made between his grantor and the selectmen waiving damages, if the road has not been opened in the manner pointed out in the statute.— *Battles v. Braintree*, 14 Vt. 348.

An action to recover damages for an injury sustained on a road cannot be maintained against the town, unless the road has been opened in the manner prescribed by the statute.— *Young v. Wheelock*, 18 Vt. 493.

When a highway has been laid out by the selectmen and has been made by the town, and kept in repair and traveled by the public for twelve or thirteen years, and the landowner has accepted damages for the land taken and built his fences by the side of it, etc., he cannot maintain trespass on the freehold on the ground that the selectmen never filed a certificate that the road was opened.— *Felch v. Gilman*, 22 Vt. 38.

A copy of the certificate of opening shall within six days from the day of its record be delivered by the selectmen to each person whose lands are taken by such highway, if such person is known, if unknown, to the occupant, if any, of such land. S. 3304.

Highways Between two Towns.— The selectmen of two adjoining towns, if a majority of each town assent thereto, may, by agreement, lay out a highway on the line between such towns, or erect a bridge over a stream between such towns. S. 3329.

They may agree as to what part of the road, if already laid out, shall be made and repaired, and what share of the damages shall be paid by each town; and, if a bridge is so erected, they may agree upon the proportion each town shall pay towards making and keeping the same in repair. *Ibid.*, S. 3330.

When a petition is presented to the selectmen of a town by seven freeholders of the town or vicinity, in case of a highway, and by twenty

such freeholders in case of a bridge, asking the selectmen to lay out, alter, or discontinue such highway, or to build such bridge on the line between two towns, they shall notify the selectmen of the other town, and the selectmen of such towns shall appoint a time of hearing and give notice thereof. *Ibid.*, SS. 3331, 3332.

Such selectmen shall proceed in the same manner as the selectmen of one town in laying out highways, or building bridges; and their proceedings, or a duplicate thereof, shall be returned to the clerk of each town, within six months from the time of final hearing on such application, and their order and the surveys shall be recorded in each town clerk's office. *Ibid.*, S. 3333.

For the purposes of jurisdiction, a river is to be considered as running between two towns, both when it is literally so and when neither can erect a bridge without extending it into the other town.—*Brookline v. Westminster*, 4 Vt. 224.

"On the line between two towns," refers to a road divided by the line of the town, and over the limits of which the selectmen of neither town have authority to act or lay the road.—*In re Bridport*, 24 Vt. 179.

A petition to the county court for the appointment of commissioners will not lie until the selectmen have neglected or refused to lay out the highway asked for.—*Dunn v. Poernal*, 65 Vt. 116.

If a highway is on a line between two towns, both towns are liable to keep it in repair. The term highway includes a bridge.—*Glover v. Carpenter*, 70 Vt. 278.

Graveling and Grading.—Selectmen shall have the same power to order hills graded and surfaces graveled upon any highway, either laid out by them or already existing, that they have to lay out, alter or discontinue highways. S. 3356.

A selectman or road commissioner shall not alter a highway, by cutting down or raising the roadbed in front of a dwelling-house or other building standing upon the line of said highway, more than three feet, without first giving notice to the owners thereof, of a time when the selectmen will examine the premises, hear them upon the question of making such alteration and damages by reason of such alteration, at which time the selectmen shall attend and hear such owners, if they desire to be heard. S. 3357.

If the selectmen are of opinion that the public good, or the necessity or convenience of individuals requires that such roadbed be altered by lowering or raising the same more than three feet, they may order such alteration to be made, and if they are of opinion that such owners will sustain damage by reason of such alteration, they shall determine and award the amount thereof to the owners, respectively, taking into account, by way of offset thereto, such special benefit, if any, to such owners as shall accrue to them by reason of such alteration. S. 3358.

The selectmen shall make their orders and awards for damages, and refusals to award damages to such owners, in writing, and shall cause the same to be recorded in the office of the clerk of the town in which

such highway is situated, within ten days from the time of making the same. S. 3359.

Highways, Winter Roads.—The selectmen have authority to open winter roads in cases where public highways are so obstructed by snow that travel upon them is impracticable. They are required to give notice to the owners of lands through which such roads pass, and upon hearing, award damages. If the damages are accepted, the selectmen draw orders upon the town treasury therefor.

The proceedings in laying out and awarding damages for such roads are certified by them and recorded in the town clerk's office. The roads are continued only during the winter in which they are laid out.

If it becomes necessary for the convenient removal of lumber, wood, or other material, to pass through lands, of any person other than the owner of the land from which such lumber or other material is to be removed, the selectmen may lay out a road through the land of any person for the purposes mentioned; and, after notice to the owner and a hearing, they determine the necessity for, and assess the damages caused by laying out of such a road, which shall be paid by the person applying for the road before it is opened for use. An appeal may be taken by the landowners if dissatisfied, as in case of appraisal of damages in laying out highways. The selectmen may fix the length of time such road may be used, and may order it closed or discontinued. SS. 3396-3402.

Extending Time for Completion.—The selectmen of a town in which a highway or bridge is ordered to be built, may apply by petition to the court making the order, to extend the time for completing the same. S. 3374.

Discontinued, When.—The selectmen may discontinue a highway laid out by the selectmen or under the authority of the original proprietors, but before discontinuing a highway they shall appoint a time for examining the premises and hearing parties interested, and shall give notice thereof by posting notice in two or more public places in the town of the time and place of said hearing. S. 3379.

The selectmen of a town have no power to discontinue a road laid by the road commissioners, or a committee appointed by the legislature, or the supreme or county court.—*State v. Shrewsbury*, 8 Vt. 223.

A former adjudication in a proceeding to discontinue a highway does not work an estoppel to a later proceeding for that purpose.—*Ferguson v. Sheffield*, 52 Vt. 77.

County Highways Discontinued.—The selectmen may discontinue such portions of the old county highways laid out by county or county court commissioners as the public good requires, when such highways have not been in use for one year, or have been abandoned by reason of new highways. S. 3381.

Laid Out by General Assembly.—Selectmen may alter or discontinue a highway in their town laid out by a committee appointed by the general assembly; but if the highway is laid through two or more towns, the same proceedings shall be had as in laying, altering or discontinuing highways through two or more towns. S. 3382.

Floods.—When a highway is made impassable by a landslide, or washout, or a bridge is swept away by a flood, the selectmen may change the location of the highway or bridge to places less exposed, or where the cost of maintenance will be less, and may discontinue unnecessary parts of the old highway and at once open the new one for work and travel. S. 3411.

They shall assess and tender compensation to parties damaged by such change, previous to opening the highway. S. 3412.

Purchase of Turnpikes and Bridges.—When there is occasion for a new highway, the supreme or county courts, or selectmen, respectively having jurisdiction of the laying of such highway, shall have the same power to take the real estate, easement, or franchise of a turnpike, plank road, or bridge corporation, when in their judgment the public good requires, which such courts or selectmen have to lay out highways over individual or private property, and the same rules shall be observed in making compensation to the corporations and persons whose estate, easement, franchise, or rights are taken as in other cases. S. 3413.

The whole, if any, of such real estate, easement, or franchise, shall be taken and paid for, except in case of a turnpike, when divided into sections in pursuance of law. S. 3414.

The Act of 1839 authorizing the supreme and county courts to take the franchise of a turnpike corporation for a public highway, declared constitutional.—*Armington v. Barnet*, 15 Vt. 745.

The franchise of a bridge corporation may be taken for a public highway under the act of 1839.—*West River Bridge Co. v. Dix*, 16 Vt. 446.

In apportioning to different towns the expense of converting a turnpike into a free road, the value of the turnpike franchise in each town should govern.—*Taylor v. Rutland*, 26 Vt. 313.

Purchase Bridge.—A town may authorize its selectmen to unite with an adjoining town, whether in this or an adjoining state, in purchasing the real estate, easement, or franchise of any bridge or ferry corporation, when the public good requires a highway at or near the place occupied by such bridge or ferry. SS. 3415, 3416.

The selectmen so authorized may contract with the adjoining town as to the consideration to be paid for said franchise and property, and the proportion of the expense thereafter to be borne by each town, for the repairs or rebuilding of a bridge near the site of said bridge or ferry; and also to contract with such town as to the proportion to be paid by each town for damages that may be suffered by any person by reason of the insufficiency of such bridge. S. 3417.

Diversion of Streams.—When it appears necessary, in laying out, altering, constructing, or repairing a highway, the selectmen or commissioners may change the course of a stream, or order the same to be changed, and the proceedings in respect thereto shall be the same as in laying out highways. SS. 3418, 3419.

Repairs in General.—Highways and bridges shall be kept in good and sufficient repair at all seasons of the year. S. 3432.

Tax for Repairs.—For keeping in repair the highways, the selectmen shall, annually, within ten days after the completion of the grand list, assess a tax of twenty cents on the dollar of the grand list of their town, and if further funds are needed therefor, they shall be raised as an additional highway tax. S. 3433.

An old warrant for the taxes of 1881 was not good for the taxes of 1882. A committee has no right to assume that a tax-payer who is responsible will not pay and to increase the amount of the tax to cover that contingency.—*Rowell v. Horton*, 57 Vt. 31.

State Highway Tax.—A state highway tax of five cents on the dollar is assessed annually upon the grand list of a town for the support of highways. The state treasurer apportions to each town, according to its grand list, the amount to be paid by the town and transmits to the town treasurer a notice of the amount so apportioned, which must be paid into the state treasury, on or before the tenth day of June. S. 3434.

The selectmen, upon notice from the town treasurer of the amount, draw an order on the treasurer for the same, and the treasurer is required to pay the sum called for to the state treasurer out of any moneys belonging to the town. If there are not sufficient funds in his hands to pay the tax, the selectmen borrow the necessary amount upon order. SS. 3435, 3436.

The tax so raised is repaid to the town upon the basis of road mileage, to be ascertained by the selectmen, who are required to measure the roads of their towns, both new roads and roads discontinued, but not pent roads, and certify the results of such measurements, under oath, which certificate is recorded in the office of the town clerk. A certified copy of this certificate is transmitted by the clerk to the secretary of state, who certifies the same to the state treasurer. The treasurer thereupon apportions to the town its portion of the tax, upon the basis of the ratio of the highway mileage of the town compared with the total road mileage of the whole state. This amount as thus ascertained is remitted annually by the state treasurer to the treasurer of the town, on or before the first day of July in each year, but no town receives its proportion of the tax unless it complies with the provisions of the law. SS. 3438-3440.

Repairs.—The selectmen are authorized to purchase the tools, including road machines, necessary in making and repairing highways,

also planks and other materials for repairing highways and bridges, but they are not allowed to incur an expense for road machines exceeding two hundred and fifty dollars in one year. In case of the neglect of other officers or agents of the town to keep its highways and bridges in good repair, the selectmen are required to take charge of and keep the same in good and sufficient repair at all seasons of the year. SS. 3461-3463.

They may also take material to build or repair a road, or direct the road commissioner to take the same, when it lies within the limits of the highway, and if such material is outside the limits of the highway, it may be taken, upon notice to the owner and a tender of the amount of damages, as appraised by the selectmen.

In a case where the road commissioner is of opinion that an embankment should be made on the banks of a stream for the protection of a highway, and the owner of the stream or of the adjacent land, will not permit him to enter upon the land for the purpose or requires him to pay a larger sum than he judges to be reasonable, the selectmen upon request of the commissioner are required to examine the premises, and, upon notice to the owner, assess the damages for such embankment, and then direct the commissioner to erect the same. SS. 3465-3470.

The duties of selectmen in reference to the maintenance and repair of highways are of a *quasi*-judicial nature. They are not personally liable for an injury sustained through a defect in a public highway.—*Daniels v. Hathaway*, 65 Vt. 247.

Taxes Used to Repair.—All bridges and culverts exceeding four-foot span shall be under the exclusive control of the selectmen, who shall keep the same in repair and rebuild when necessary; and the funds for that purpose shall be raised in the town tax. SS. 3443, 3447.

Sidewalks and Parks in.—Selectmen may at the request of ten or more citizens lay out parks and sidewalks within the limits of the highway where it will not conflict with the travel in said highway, and post notices forbidding driving on them except where it is necessary to cross the sidewalk, for entering private grounds. S. 3474.

Obstructions in.—If a person incloses a part of the highway, or erects a fence, building, or other encroachment, or makes an obstruction, or puts a nuisance on a highway, or continues such inclosure, fence, building, encroachment, or nuisance, the selectmen of the town may, by their order, require the person to remove the same within such time as they think reasonable, not exceeding six months, and give notice of their order to the person offending. S. 3508.

The selectmen may remove such fence, building, nuisance, or other encroachment, at the expense of the person who erected, caused or continued the same; and may recover such expense of the person so offending with costs in an action on the case, in the name of the town. S. 3510.

Trees, Removal of.—The selectmen may remove shade or ornamental trees standing in a public highway, park, or common, burial-ground, or cemetery, when in their judgment the public good or convenience requires. S. 5017.

Wheel Rims, Permits.—The selectmen may give persons permission to use wagons, carts, or carriages in their towns with the rims of less width than is provided in this section when in their opinion the highways would not be greatly injured thereby. S. 3516.

Sled Brake on.—The selectmen shall on the written petition of five or more freeholders of the town examine a highway, and, if they find that the use of a self-acting sled brake should be prohibited thereon, they shall post notices to that effect in conspicuous places at each end of that portion of the highway on which such use is prohibited. S. 3521.

Alteration of, for a Railroad.—When it is necessary for a railroad corporation to lay out its road upon, or by the side of a turnpike or way upon a bridge owned by a town or turnpike corporation, the railroad corporation shall give notice thereof to one of the selectmen of the town or to one of the directors of the turnpike. SS. 3833, 3835.

Where a grant has been made to a private corporation (not exclusive) to erect a bridge, turnpike, or other public convenience, there is no constitutional obligation on the legislature not to grant a second corporation the right to erect another bridge or turnpike for a similar purpose, to be constructed so near the former as greatly to impair or even destroy its value—and this without making compensation to the first corporation.—*White River Turnpike Co. v. Vermont C. R. R. Co.*, 21 Vt. 590.

A railroad having a grade crossing over a highway has no right to erect stations in the highway, and commits a nuisance by obstructing the way in so doing, for which it may be indicted.—*State v. Vermont C. R. R. Co.* 27 Vt. 103.

Where a railroad negligently constructs a crossing over a public highway and a person without fault is injured in his property thereby, while traveling on the crossing, the company is liable in an action to such person.—*Mann v. Vermont C. R. R. Co.*, 55 Vt. 484.

A railroad may be indicted for obstructing a highway. Where the company has encroached upon a highway and afterwards leases its road to another, the lessee gains no right to further encroach upon the way.—*State v. Troy & Boston R. R. Co.*, 57 Vt. 144.

Infectious Diseases, Regulations.—The selectmen of towns may make and enforce such regulations as they deem proper to prevent the spread of infectious or contagious diseases among domestic animals, shall inquire into all cases coming to their knowledge and immediately report the same to the governor. SS. 4808, 4817.

Innkeepers' and Victuallers' License.—The selectmen may license for one year or a less time suitable persons to keep victualling houses, shops, or cellars, or inns in their town, and sell therein fruits and provisions; and they may revoke such licenses granted by them or their predecessors, when the public good requires. S. 4719.

The license shall be signed by a majority of the selectmen. No

charge shall be made for the license. If revoked, a certificate thereof shall be recorded in the office of the clerk of the town, and notice given to the person holding the same. S. 4721.

Where one controls the business of a victual-shop in the name and on the credit of his wife but without her presence or personal attention, he is a keeper within the meaning of a by-law prohibiting a person from keeping such a shop without a license, and is liable to the penalty imposed by the by-law.— *Village of St. Johnsbury v. Thompson*, 59 Vt. 300.

Inquests on the Dead.— If a selectman is informed that the dead body of a person, supposed to have died by casualty or violence, is found lying within the town, he may, if the public good requires, apply to a justice of the county, who shall inquire into the cause and manner of the death of such person. S. 4713.

Insane Person, Guardian Notified.— If an insane person is found going at large, and in the opinion of the selectmen of the town where he is so found, is deranged so as to be an unsafe person to be at large, such selectmen may notify the guardian of such insane person, or, if a pauper, the overseer of the poor of the town where such insane pauper resides, to take charge of and restrain him from going at large. S. 3281.

Guardian Applied for.— If an insane person, not a pauper, found going at large in any town, has no legally appointed guardian, application for the appointment of a guardian over him, may be made to the probate court of the district in which such insane person resides by the selectmen of the town where he is found going at large, in the same manner, as upon an application by the overseer of the poor of the town in which such person resides and is chargeable. S. 3283.

Taken into Custody.— The selectmen, after giving the guardian or overseer, the notice provided in this chapter, may take such insane person into custody, and keep him in such confinement as is necessary until removed by said guardian or overseer. S. 3286.

Insane Poor; Court of Inquiry.— The selectmen shall on application of the overseer of the poor of a town, ascertain whether an insane person is liable to be supported by the state, and may institute a court of inquiry before the judge of probate of the district in which such town is situated, giving at least ten days' notice thereof to the state's attorney of the county. S. 3214.

Interest Stopped on Town Orders.— The selectmen may notify holders of town orders drawn on demand or overdue, to present the same for payment on or before a certain day, and that after said day interest on such orders will cease. S. 3051.

Itinerant Vendors' License.— The selectmen may authorize the town clerk to issue licenses to itinerant vendors. S. 4756.

Lockup Authorized.— A town may, at a meeting called for that purpose, authorize the selectmen to purchase or erect and maintain at the

expense of the town within its corporate limits one or more lockups or jails. S. 5302.

Jailer.—The selectmen may appoint a jailer for the town lockup and may remove him at pleasure. Such appointment or removal shall be in writing and recorded in the office of the town clerk. S. 5303.

Lumber, Floating, Damage Adjusted.—In case the owner of floating lumber lodged upon lands or dams cannot agree with the owner of the lands or dams upon the damage caused by such lumber, the selectmen of the town where the lands or dams are situated, not being interested, shall adjust the same. S. 3661.

The owner of a mill-dam injured by floating timber may maintain an action on the case for damage to the dam.—*Coe v. Hall*, 41 Vt. 325.

Meridian Line Established.—Upon application of the selectmen of a town, a person appointed by the governor shall set out and establish a true meridian line not less than one hundred feet in length at some convenient place in the town, to be selected, provided and kept by the selectmen for the free use of all persons.

Such selectmen, under the direction of the person so appointed by the governor, shall erect suitable stone or iron posts at the extremities of such meridian line, setting the same firmly in the ground, the north post to be marked with the letter M and the south post with the initial letter or letters of the town. SS. 4879, 4880.

Minors Bound to Service.—Children under fourteen years of age having no parent competent to act and no guardian, may bind themselves with the approbation of the selectmen of the town where they reside.

Minors above the age of fourteen years may be bound in like manner. SS. 2830, 2831.

Charged with Crime.—A child under the age of twelve years brought before a justice of the peace charged with an offense not punishable with death, may in certain cases be placed in the custody of a selectman of the town where the child resides or in which the trial or hearing is to be had. SS. 1945-1953.

Employed in Factories.—The selectmen shall inquire into the treatment of minors employed in manufacturing establishments in their towns, and, if in their opinion, the education, morals, health, food, or clothing of any such minor is unreasonably neglected, or he is treated with improper severity or abuse, or compelled to labor at unreasonable hours or times, or in an unreasonable manner, they shall, if such minor is not a servant or apprentice bound under the provisions of this chapter, and if he has no parent or guardian residing in this state, discharge him from such employment, and with his consent bind him as a servant or apprentice to some other person; and the contract shall be made and

the indenture executed and deposited as provided in this chapter. S. 2838.

Militia, Subsistence and Transportation.—The selectmen of the town to which men ordered out belong, shall furnish, at the expense of the state, such subsistence and transportation as the commander-in-chief directs. S. 4422.

Oils, Inspector, Appointment.—The selectmen of a town where oils are sold, upon the petition of five or more inhabitants, shall appoint, annually, one or more suitable persons, not interested in the sale of said oils, as inspectors thereof and fix their compensation, which shall be paid by the parties requiring their services. S. 4710.

Orders on Treasurer.—The selectmen may draw orders on the town treasurer for damages for land or property taken or improved for a highway or other public use, or for damages settled by agreement or awarded for injuries sustained from the insufficiency of a highway. S. 3019.

It is the duty of the selectmen to keep a record of orders drawn by them and to present it at the annual meeting with a general statement of the property and finances of the town.—*Prescott v. Vershire*, 63 Vt. 517.

Parks, Laying out.—Fifty or more freeholders of a town, desiring to have a public park or a public square laid out in such town for the erection of a soldiers' monument or for other public purpose, may apply by petition in writing to the selectmen of the town requesting them to lay out such park or square. The selectmen shall thereupon examine the premises and appoint a time and place for hearing parties interested, and shall proceed in setting out land, awarding damages, and in all other particulars, as in laying out a highway on petition of three freeholders. S. 3033.

Pauper, Marriage Certificate.—A town clerk shall not issue a marriage certificate to a town pauper without the written consent of the selectmen or overseer of the poor of each of the towns where the parties reside, or which are liable for their support. S. 2637.

Pent Roads Inclosed.—The selectmen may allow pent roads to be inclosed and occupied by the owner of the land during any part of the year, and bars and gates, in such places as they designate, to be erected thereon; and such permission and any alterations therein shall be in writing and recorded in the office of the town clerk. S. 3392.

Pent Roads; Hitching Posts.—The selectmen shall at the expense of the town erect hitching posts on each side of the gates or bars on a pent road; and for neglect thereof the town may be indicted by the grand jury. S. 3394.

Pent Roads, Order Laying out.—The selectmen when they lay out a pent road shall, in their order, require the owner of the land, within

a reasonable time, to remove his fences, timber, wood or trees; but the order shall not take effect until compensation for damages to the land is paid as provided in this chapter. S. 3395.

Polling-places.— The selectmen in any town in the state having two or more villages, incorporated or otherwise, each containing fifty or more legal voters in freemen's meetings, may, in their discretion, and shall, on the petition of ten or more legal voters in said town, at least five days before a general, or local, election determine the number of polling-places in such town, not to exceed the number of such villages, and they shall cause the same to be provided with a sufficient number of voting-booths in which voters may conveniently mark their ballots, and in the marking thereof be screened from the observation of others; and such booths and polling-places shall be supplied for use as is now required by law for other booths and polling-places. Existing polling-place shall be known as central polling-places, and those created by this act shall be known as additional polling-places.

In a town having additional polling-places, the selectmen in making the check list for biennial, September, and presidential elections, shall sub-divide such list, making an alphabetical list for each polling-place; and shall put each voter on such sub-divided list in the polling-place where he can most conveniently vote. Acts of 1904, No. 5, SS. 1, 2.

Public Lands; Powers and Duties.—The selectmen shall have the care of lands in their towns granted under the authority of the British government as glebes for the use of the church of England and now by law granted to such town for the use of schools, and lands granted to the use of the ministry or the social worship of God, and lands granted to the first settled minister, and not appropriated according to law. S. 3027.

They shall be entitled to the possession of such lands, except when the same have been otherwise disposed of according to law, and may commence, prosecute or defend in the name of the town any action necessary to recover or protect such possession, or recover damages for injuries done to the same. S. 3028.

They may lease such lands as they deem beneficial, reserving rents for the same which shall be annually paid into the treasury of the town. S. 3029.

The rents of lands granted as glebes shall be divided by the selectmen among the several school districts for the use of schools, as provided for the distribution of other moneys appropriated to the use of schools. S. 3030.

Ministry, Lands for.—The rents of lands granted to the use of the ministry or social worship of God, and the rents of lands granted to the first settled minister, shall, annually, on the Friday preceding the last Tuesday in March, be equally divided by the selectmen among the dif-

ferent organized religious societies in town that maintain public worship at least one-fourth of the Sabbaths in the year; and if there is no such society, the same shall be covered into the treasury, and may be appropriated to pay for preaching the gospel, or for the support of schools, or for the support of public schools, or for the improvement or care of public burial-grounds, as such town, by a vote in town meeting directs, until a minister is settled or a religious society organized in the town. S. 3031.

The preceding sections shall not affect a lease of such lands or a contract relating to or disposition of the same under previous law. S. 3032.

The division of the rents granted to the use of the ministry is a judicial act and the selectmen are not liable for an erroneous division of such rents, if they act in good faith and with reasonable care and diligence. Neither the schedule of members of a religious society as furnished by the clerk, nor its records are conclusive proof on the matter of such division as to who are its members.—*First Universalist Soc. v. Leach*, 35 Vt. 108.

Mandamus will not lie in favor of a spiritual society against the selectmen of a town, to compel them to allot to it an equal share of the public money given by law to religious societies in a town, where the money had been divided before the suit was brought; an order to allot would be nugatory; nor will it lie against their successors in office; as there is no person to whom the writ can be directed.—*Spiritual Athenæum Soc. v. Selectmen*, 58 Vt. 192.

Railroads; Alterations of Highways.—Alterations made in a turnpike or way as provided in this chapter, shall if made by commissioners be signed by them, and if agreed upon by the parties shall be signed by the selectmen of the town or the turnpike directors and duly recorded in the town clerk's office. S. 3836.

When a railroad corporation obstructs a highway without law or right by building its roadbed within the limits of the highway, it may be indicted for creating a nuisance. The lessee of such railway company from lapse of time or acquiescence on the part of the town gains no right to encroach further upon the highway, and there is no presumption that the company in taking part took the whole of the highway, when all the evidence tended to prove that the original obstruction was without authority of law.—*State v. Troy & Boston R. R. Co.*, 57 Vt. 144.

When a railroad company used an old highway for its roadbed and the selectmen filed in the town clerk's office a certificate of the survey of a new highway and a vacation of the old one, it was held that it would be presumed that an agreement was entered into between the selectmen and the railroad company for a change of location of the highway. A public officer, acting under a public statute, will be presumed to have done his duty until the contrary appears.—*Mead v. Railroad Co.*, 64 Vt. 52.

Railroads; Liability for Crossing Repairs.—The liability of the corporation for repairs of a crossing shall continue after abandonment of the railroad, unless the selectmen of the town consent in writing that the company be released therefrom, and cause such written consent to be recorded in the record of deeds in the town clerk's office, or unless the company or its assigns restore such crossing to its original state of usefulness and permanency. S. 3845.

If the selectmen of the town in which such crossing is located are of opinion that such bridge, culvert, crossing, or other constructions re-

quire repairing or rebuilding in order to be safe for travel thereon, they may notify the corporation required to repair or rebuild the same, by leaving a written notice to that effect with the president, superintendent of such road or the clerk of such corporation. If the corporation does not repair or rebuild the same for one month after such notice, the town may do so and recover the expense thereof from the corporation. S. 3846.

Damages to an individual in consequence of a railway company so constructing their road across a highway as to make it impassable at the crossing, does not constitute a claim against the company, where the facts show no positive injury, but a mere non-feasance. The liability in such a case is to the town. Statute construed.—*Buck v. Railroad Co.*, 42 Vt. 370.

If a railroad company negligently constructs a crossing over a public highway and a person without fault is injured in his property while traveling on the crossing by reason of a defect in it, the company is liable to him for damages.—*Mann v. Central Vermont R. R. Co.*, 55 Vt. 484.

Under provisions of sections 3871, 3877, railroads are bound to maintain cattle-guards on all road crossings sufficient to prevent cattle and other animals from getting upon the track, and are liable for damages to the same if occasioned by want of such guards, whether such animals are upon the road crossings lawfully or not. The case follows *Harwood v. Bennington R. R. Co.*, 67 Vt. 664.—*Quimby v. Boston & Maine R. R. Co.*, 71 Vt. 301.

A railroad company operating its road is not a public officer within the meaning of V. S. 1298, III., and is not entitled to an appeal from the judgment of a justice of the peace, in a case otherwise not appealable.—*Lyons v. Railroad Co.*, 74 Vt. 17.

Railroads, Meeting in Aid.—The selectmen, on the application of ten voters of a town, shall within ten days warn a meeting of the voters of the town, to be held at the usual place of holding town meetings, and the time of holding the meeting shall not be more than twenty nor less than twelve days from the time of posting the notices. The warning shall state that the business to be done at the meeting is to aid in the construction of a railroad, and its name. S. 3103.

Railroad Police, Appointment.—The selectmen of a town may, upon petition of a person or corporation owning or operating a railroad, appoint such employees as such person or corporation designate to act as police in and upon the premises and cars owned, managed or used by such person or corporation, and shall issue to such employees commissions to act as police.

Such police shall hold their offices during the pleasure of the selectmen by whom they are appointed. SS. 3928, 3929.

An arrest made on Sunday by a railroad policeman was legal. The offense was torturing sheep.—*Corbett v. Sullivan*, 54 Vt. 619.

Railroads, Thistles and Weeds.—In case a person or corporation owning or operating a railroad shall fail to remove thistles and weeds growing within its boundaries as prescribed by section 3894, the selectmen of the town where it is located shall give notice thereof by mail to the principal office of such person or corporation, and in case such fail-

ure continues for ten days after notice the selectmen shall forthwith cause the thistles and weeds to be cut at the expense of the town, and the town may recover from such person or corporation the sum of one hundred dollars. S. 3895.

SCHOOLS.

Directors, Vacancy Filled.—The selectmen may temporarily fill a vacancy in a board of school directors until an election is had, and a record thereof shall be made in the town clerk's office. S. 671.

Tax for.—The selectmen shall, annually, appropriate for school purposes a sum not exceeding one-half nor less than one-fifth, of the grand list of the town district, and shall assess a tax to meet such appropriations. S. 734.

Where an unreasonable excess is raised above the amount of taxes voted for school purposes the tax is illegal.—*Rowell v. Horton*, 57 Vt. 31.

When in 1892, the state abolished the existing school districts and made each town a district charged with the education of its youth, the town became entitled to the funds held by the districts for general educational purposes and to any taxes assessed and not collected.—*Barre v. School District*, 67 Vt. 108.

State Tax.—If the funds in the hands of the town treasurer are not sufficient to pay the state school tax the selectmen shall borrow the necessary amount on orders. S. 760.

Books Lost or Destroyed.—When a pupil loses, destroys, or unnecessarily injures any book or appliance loaned to him, and his parent or guardian fails to make good the loss or damage to the satisfaction of the school directors, they shall report the case to the selectmen of the town, who shall include in the next town, city, or district tax of the delinquent parent or guardian the value of such book or appliance, to be collected like other town, city, or district taxes. S. 771.

Districts in Unorganized Towns and Gores.—The selectmen of a town, on application of three voters in an adjoining unorganized town or gore, may divide such town or gore into as many school districts as may be needed, and number such districts and organize them in the manner provided in the following section.

Such selectmen shall call a meeting in such district by posting up a notice thereof, specifying the time, place and business of the meeting, in two of the most public places in such district, at least seven days before the time therein specified. One of the selectmen shall preside in the meeting until a moderator and clerk are chosen, when the district shall be held to be organized.

They shall cause their doings to be recorded in the office of the clerk of the county in which such town or gore is situated and shall receive reasonable compensation from the petitioners. SS. 779-781.

When a school district has been organized in fact for a number of years and has chosen its officers from time to time, the selectmen cannot organize it

again as an unorganized district because doubts are entertained of the regularity of a former organization. A person who acted as moderator of a meeting under an attempted but abortive new organization is not thereby disqualified from contesting such proceedings.—*Thomas v. Gibson*, 11 Vt. 607.

District Boundaries.—In case a change of boundaries of a school district is voted and notice of such vote be given to the selectmen, they shall duly warn a meeting of the town, exclusive of such district, setting forth in the warning the vote of the district and the change of boundaries which it desires to have made. S. 807.

Schoolhouses, Location Fixed.—If the district fails to agree upon a location for a schoolhouse, the selectmen of the town in which such district is situated, or if in an unorganized town or gore, the selectmen of an adjoining town may, upon application of the school directors or prudential committee, determine such location. S. 811.

Taking Land.—When a schoolhouse is located, and lands, and yards, are needed for the same, or when a district votes to purchase additional land for school purposes, if the owner refuses to convey the same to the district for a reasonable price, the selectmen of the town, or if in an unorganized town or gore, the selectmen of an adjoining town, on application of the school directors, or prudential committee, shall locate and set out the necessary land and cause the same to be surveyed; and shall appoint a hearing and give notice thereof to persons interested, and at such hearing ascertain and determine the damages sustained by interested persons; and the damages assessed shall be paid or tendered to such persons before taking possession of the land.

When the selectmen decide to take land, they shall in their order for that purpose fix a time within which the owner or occupant thereof will be required to remove his buildings, fences, timber, wood, or trees and notify such owner or occupant thereof; and if they are not removed within that time, the selectmen shall remove them at the expense of the district.

All orders and proceedings of the selectmen in such cases, with the survey of the land taken, shall be recorded in the office of the clerk of the town in which the land is situated, or if in an unorganized town, or gore, in the county clerk's office. SS. 812-814.

Taking land for the location of a district schoolhouse is a taking for a public use, hence the act providing for such taking *in invitum* is constitutional. The taking is not limited to the mere site of the house but includes such adjacent land for the purpose of a yard, etc., as the selectmen or commissioners may think requisite.—*Williams v. School District*, 33 Vt. 271.

Records of proceedings of municipal public corporations cannot be collaterally attacked and overthrown in a suit at law.

When posted notices of sale have been lost their contents may be shown by parol without first showing the loss, which after a year has elapsed may be presumed by the court.—*Eddy v. Wilson*, 43 Vt. 362.

Town School Fund.—The selectmen of a town shall have charge of the real and personal estate appropriated to the use of schools therein,

unless otherwise provided by law, or unless the person giving any part thereof directs the same to be managed in some other way, and annually render an account to the town; and the selectmen shall lease such lands and loan such moneys on annual or semi-annual interest, upon sufficient real or personal estate security, in the state.

The securities for the payment of the moneys so loaned and the interest thereon, shall be taken in the name of the town, and the selectmen may, in the name of the town, prosecute and defend actions for the recovery or protection of the estate so intrusted to their care; if the title or possession of real estate mortgaged or deeded as security is recovered in such action, the selectmen may, in the name of the town, lease or sell and convey such real state, and invest the moneys received therefrom as provided in the preceding section.

The securities belonging to the town school fund shall be deposited in the office of the town treasurer, and moneys received on account of the same shall be paid into such treasury; and a separate account thereof shall be kept on the books of the treasurer. SS. 754, 755, 757.

The treasurer of a school corporation can make leases of lands for the corporation when authorized so to do by vote of the corporation.

Town authorities may grant perpetual leases of lands providing for regularly recurring payments of rent.—*White v. Fuller*, 38 Vt. 193.

Fractional Districts.—The selectmen of the towns in which a fractional district is located shall appraise and adjust the school property of such district, and shall make an equitable apportionment of the same and of the debts of the district, and ascertain the balance equitably due on this account from either of said towns to any of said towns, and shall make a report to the board of school directors of the town against which the balance is found, and the board shall draw an order on their treasurer for the amount so found due. S. 821.

Division of Moneys.—The selectmen of a town having within its limits a district incorporated by a special act of the general assembly shall, annually, on or before the tenth day of September, divide the public school money in the treasury of such town between the town district and the incorporated school district in proportion to the number of legal schools maintained in each during the preceding year. S. 848.

Before making such division the selectmen shall carefully examine the entries in each register, and ascertain the aggregate attendance during the school year, and whether it appears from the certificate of the directors or prudential committee that the schools were kept by duly licensed teachers, and that the clerk has made the entries required by law, and no public money shall be paid unless the selectmen find, upon such examination, that the law has been fully complied with. S. 849.

The selectmen in the month of April, annually, after they have made division of the public moneys, shall lodge with the town clerk a written

statement of the amount of moneys apportioned to each district for the preceding school year. S. 852.

Steam Engines, Inspection.— Upon application of three citizens the selectmen of a town, or any person duly authorized by them, may, after notice to the parties interested, examine any stationary steam engine or steam boiler therein, and for that purpose may enter any house, shop, or building, and, if upon examination it appears probable that the use of such engine or boiler is unsafe, they shall issue an order prohibiting the use thereof until it is rendered safe. S. 4700.

Streams, Obstructions; Removal.— A person whose land is endangered or injured by the obstruction of a stream of water may apply to the selectmen of the town where such obstructions are situated, or if two of such selectmen are interested or otherwise incapacitated to judge in the matter, to the selectmen of an adjoining town; and such selectmen may authorize the applicant to remove the obstructions at his own expense. S. 3666.

Street Railroads, Location.— A person or corporation proposing to construct a railway in any of the highways or streets in this state shall file with the selectmen of the town, and with the town clerk of the town, in which said railway is proposed to be located, a statement defining the streets and highways and the portion thereof in which said railway is to be located, the tracks, turn-outs, and switches to be placed therein, the culverts and bridges that the same is to cross, the manner of improving and strengthening the same, the location of poles or wires that are intended to be used in connection therewith and the kind of power to be used in operating the same, before beginning the construction of said railway.

The statement referred to in the preceding section may be made with reference to sections or portions of said railway, and before beginning the construction of such railway such statement must be made and filed and the permission of the selectmen obtained for building and operating said railway in the streets and highways described in the statement. SS. 3935, 3936.

Taxes, Levy to Pay Interest on Bonds.— If a town does not seasonably provide for the payment of the interest on its bonds issued under the provisions of this chapter as such interest becomes due, the selectmen, or other proper officer, shall seasonably assess and cause to be collected, upon the grand list of the town, a sum sufficient to pay such interest with the cost of collection, as the same falls due. S. 3117.

Taxes; Tax-bills Made Out.— The selectmen shall seasonably make out and deliver to the proper collector, or to the town treasurer, if the town has voted to collect its taxes by that officer, tax-bills for state, county, town, school and highway taxes with the name of each person

taxed and the amount of his tax, and annex proper warrants thereto for collection; and said selectmen may include all of said taxes or a part thereof in one tax-bill, and only one warrant shall be required for the collection of taxes on such tax-bill; and the selectmen shall certify on each tax-bill so made out what taxes are included therein and the rate per cent of each tax so included. S. 3017.

Upon the delivery of such tax-bills to the collector the selectmen shall take from him a receipt therefor, and shall deliver the same to the town treasurer. S. 3018.

Omission of the name of the constable or collector of taxes does not render a warrant or collection of taxes void — nor the insertion of the name of a deceased person. A constable may execute a warrant on a rate-bill issued before he was appointed; it is sufficient if he is such at the time he executes it. Selectmen shall annex a warrant to a rate-bill for school taxes as in case of a tax voted by the town.— *Wilson v. Seavey*, 38 Vt. 221.

Listers, having completed the grand list and deposited it in the town clerk's office as required by law, have no further control over it or authority in respect to it. One selectman may perform the mechanical act of writing names of the others to a certificate of assessment, being authorized by them to do so. A warrant for collection of a town tax might be good without any date; an error in date, apparent on its face, would not render the warrant invalid. A warrant for collection of a state tax need not be attached to the rate-bill.— *Bellows v. Weeks*, 41 Vt. 590.

A slight excess over the amount voted will not vitiate a school tax-bill, but an unreasonable excess will vitiate it and the money can be used only for the expenses of the school.

A collector must have a legal warrant to collect unpaid highway taxes. An old warrant made for use in 1882 could not be used to collect a tax of 1881.

A committee has no right to assume that a solvent tax-payer will not pay his taxes and assess enough more to cover the contingency of non-payment.— *Rowell v. Horton*, 57 Vt. 31.

To determine the liability of a collector's bondsmen it is necessary to ascertain what tax-bills were delivered to the collector during the time named in the bond, the amount collected and when, and the amount paid to the town treasurer, and when.— *Ferrisburg v. Martin*, 60 Vt. 330.

Assessment to be Uniform.—Taxes shall be uniformly assessed on the lists of the persons taxed, unless otherwise provided by law. C. 30, S. 467.

Taxes; Execution Against Town.—When demand is made upon a town for payment of an execution issued against it, and there are not available funds in the treasury to pay the same, the selectmen shall forthwith and without a vote of the town assess a tax upon the grand list of the town sufficient to pay such execution with the charges and twelve per cent interest thereon, and cause the same to be collected within sixty days. S. 3022.

Taxes, Highway; Time of Assessing Extended.—The time of assessing the highway tax and making rate bills therefor, shall be extended in towns of one thousand five hundred and less than two thousand five hundred inhabitants, five days; in towns of two thousand five hundred and less than three thousand five hundred inhabitants, ten days; in towns of three thousand five hundred and less than five thousand in-

habitants, fifteen days; in towns of five thousand and less than eight thousand inhabitants, twenty days; and in towns of eight thousand and more inhabitants, twenty-five days. S. 451.

The number of inhabitants of a town or city shall be determined by the United States census last completed before making the list. S. 452.

The printed compendium of the tenth census was legal evidence to prove the population of Ludlow in 1880.—*Fulham v. Howe*, 60 Vt. 351.

Telegraph, Telephone, etc., Companies; Wiring.—The selectmen of the town shall determine, upon application, where and in what manner wires shall be erected, giving notice to the parties in interest, or their agents, and shall certify their decision, and cause the same to be recorded in the town clerk's office, and such decision shall be final. S. 4225.

Damage.—When in the erection of a line of wires the owner or occupant of lands or tenements sustains or is likely to sustain damage thereby, the selectmen of the town shall, upon notice to parties interested, appraise such damage and the same shall be paid before the line is erected, unless petition is made to the county court on the question of damages as hereinafter provided. S. 4232.

The power of selectmen to locate lines of telegraph is limited by the statute and where they overstep their authority their award of damages is void.—*Rugg v. Telegraph Co.*, 66 Vt. 208.

Poles.—Selectmen may cause poles to be painted and may substitute straight poles for crooked ones, and recover the expense thereof, against the person or corporation owning or operating the wires or line of wires. S. 4231.

V. S. 4229 and 4230 are penal.—*Hardwick v. Telegraph Poles*, 70 Vt. 180.

New Lines.—Whenever a person or corporation is about to erect a line of telegraph or telephone wires, in and along a highway within a town, in and along which a line of poles has already been erected by another person or corporation for a similar purpose, the selectmen of such town shall have the right to permit and may require the new line to be attached to the poles already standing, as provided in the following section.

Such selectmen shall ascertain, as near as may be, the original cost of erecting such line of poles, and shall direct such person or corporation as they may require to use said poles, to pay the owners of the line already erected a fair proportion of such expense, not to exceed one-half the estimated original cost of construction; and in no case shall the poles be used until the owners of the new line tender to the original owners of said line of poles the amount so directed by said selectmen. If it is necessary to repair or renew the poles used by two or more persons or corporations the expense thereof shall be borne equally by the parties using the same.

The selectmen shall give written notice to the proprietors of both the old and new lines of all their requirements in the premises, and shall also lodge a copy of the notice in the town clerk's office, and their decision shall be final.

The proprietors of a line of poles, so required to be used by another person or corporation shall not take down or alter the position of such poles without obtaining permission of all parties who may have acquired a right to use the same, or the permission of the town officers aforesaid; and a person or corporation, injured by the violation of this section, may maintain an action on the case founded on this statute to recover the amount of the injury. SS. 4236-4239.

Private Lines.—Selectmen may authorize persons, upon such terms as they prescribe and subject to the provisions of this chapter, to construct for private use such lines along the highways of the town. S. 4242.

After the erection of such line, the posts and structures thereof shall be subject to the regulation and control of the selectmen, who may at any time require alterations in the location or erection of such posts and structures and may order the removal thereof, first giving the parties notice and an opportunity to be heard. S. 4243.

Crossing Ways.—The selectmen of the town may direct any line of wires to be placed at a greater height, or under ground, where it crosses a highway, and if a line of wires is erected or maintained across a highway contrary to the direction of the selectmen, or is not changed when directed by them, they may remove such line, and in the name of the town recover the expense thereof from the person or corporation using the same. S. 4226.

Town Bonds, Refunding Signed.—Bonds and notes to refund other like obligations of the town shall be signed by the selectmen and countersigned by the treasurer of the town. S. 3113.

Town Lines.—The selectmen, when instructed by vote in town meeting, to cause any division line of the town to be located, shall give ten days' notice in writing to the selectmen of other towns interested, requesting them to meet at the place and time named to agree upon such lines.

If the line is not thus agreed upon, the selectmen of either town may bring, in the name of the town, a petition to the supreme court, making the other towns defendants, for the appointment of commissioners, to establish the line; and the court shall appoint three disinterested persons as such commissioners.

The commissioners shall be sworn, give notice of a time and place of hearing, hear all parties interested, establish such lines, and make reports to the next term of the supreme court, and unless cause is shown to the contrary, the same shall be accepted.

If the report is accepted, the selectmen of either town may cause it with the judgment of the court thereon to be lodged for record in the clerk's office of the several towns, and thereupon the line so established shall be the division line between such towns. SS. 3097-3100.

The proceeding given by V. S., chapter 140, for establishing town lines, confines the court to locating the charter line.—*Searsburg v. Woodford*, 76 Vt. 370.

Town Meetings, Warning.—Town meetings are warned by the selectmen by a notice posted in three public places in the town at least twelve days before the meeting, setting for the business to be done and the subjects to be considered at the meeting. The notice is recorded in the town clerk's office before it is posted. They may call special town meetings when they deem it necessary and on application of six voters. SS. 2973, 2974.

If the office of any of the selectmen is vacant, those in office may call the meeting. If there are no selectmen who can call the meetings, they may be called by the town clerk. S. 2975.

Town meetings may be called to order by one of the selectmen in the absence of the moderator, and such selectman presides until a moderator *pro tempore* is chosen. S. 2977.

All business which may be legally transacted at the stated March meeting may be done at the adjourned meeting in April. No statute requires that the business to be done at this meeting should be specifically named in the warning. It is well known that the town will transact all matters necessary to its corporate interests and the inhabitants of the town are bound to take notice of the fact and are bound by the votes of the town whether present or not.—*Schoff v. Bloomfield*, 8 Vt. 478.

A town meeting warned for the first day and held on the twelfth day of the month is irregular, and its proceedings do not bind the town. No subsequent action by the town officers or any portion of the inhabitants will ratify the action of the meeting.—*Pratt v. Swanton*, 15 Vt. 147.

It is no objection to the legality of a town meeting that the notices for it were not posted in the places where such notices had been usually posted, it not appearing but that they were posted in public places as required by law.—*Stoddard v. Gilman*, 22 Vt. 568.

A warning for a town meeting was definite enough that read "to see if the voters present will vote to set off the plaintiff and six other persons named," and their real estate from School District No. 5, the same to constitute a new district.—*Moore v. Beattie*, 33 Vt. 219; *Weeks v. Batchelder*, 41 Vt. 317.

The words, "To see if the town will make alterations in school districts when met," were sufficient to warrant the consideration by the town in town meeting of any proposed changes in the limits of the school districts.—*Ovitt v. Chase*, 37 Vt. 196.

A vote of a town meeting instructing the selectmen to procure recruits for the town and empowering them to borrow funds on five years' credit to pay the bounties on such recruits, is not warranted by a warning to see if the town would raise a tax on the grand list to pay recruits and how much and when and to instruct the selectmen in the disposal of the funds.—*Blush v. Colchester*, 39 Vt. 193.

The warning, "To see if the town will raise money to pay the bounty promised to soldiers," held sufficient to support a vote, "to raise fifty-five cents on the dollar of the grand list to pay the bounty offered to soldiers."—*Blodgett v. Holbrook*, 39 Vt. 336; *Alger v. Curry*, 40 Vt. 437; *Hickok v. Shelburne*, 41 Vt. 409; *Mudget v. Johnson*, 42 Vt. 423.

V. S. 2974. A town meeting, once called by a proper warning, may be adjourned and then act under the same warning.—*Schoff v. Bloomfield*, 8 Vt. 409; *Hickok v. Shelburne*, 41 Vt. 409 (416).

A warning, "to see if the town will pay bounties to veterans who have re-enlisted in the field," and a vote "to pay each re-enlisted veteran who has re-enlisted for," etc., construed.—*Sargent v. Ludlow*, 42 Vt. 726.

A warning to see if a town will vote a tax for the purpose of paying a bounty does not authorize a vote to borrow money for the purpose.—*Atwood v. Lincoln*, 44 Vt. 332.

The charter of a city, providing that all warnings for city meetings shall be issued by the mayor and published in the manner designated by the by-laws of the city, delegates to the city the right to prescribe the manner of publication, and is not controlled by the general law.—*Allen v. Burlington*, 45 Vt. 202.

A failure to warn the town meeting of an intended vote to extend the time of redemption of mortgaged premises made the vote taken at the meeting inoperative.—*Daggett v. Mendon*, 64 Vt. 323.

Proceedings of a school meeting are not void because the clerk fails to record the warning as required by law.—*Adams v. Sleeper*, 64 Vt. 544.

Town Meeting, Preside at.—Town meetings shall be called to order by the moderator, or in his absence by one of the selectmen, who shall preside until a moderator is chosen. S. 2977.

The proceedings of a town meeting were valid in spite of the fact that no moderator was chosen, but the moderator at the previous annual meeting was called and allowed to preside.—*State ex rel. etc., v. Vershire*, 52 Vt. 41.

United States Deposit; Trustees' Bonds.—The trustees of moneys belonging to the United States shall before entering upon the duties of their office execute a bond to the town with at least three sufficient sureties in such sum as the selectmen shall direct, conditioned for the faithful performance of their duties. S. 739.

Villages, to Establish; First Meeting.—Selectmen shall, upon petition of a majority of the voters in town meeting residing in a village containing thirty or more houses, establish the bounds of such village, and cause a description thereof, by its name and bounds, to be recorded in the town clerk's office and posted in two or more public places in such village. S. 3121.

The notice of the first meeting of the voters in such village shall be signed by the town clerk or in his default by a selectman. S. 3124.

A village is liable for any negligence in the construction and maintenance of that part of a water system with which it supplies water to individuals for hire.—*Wilkins v. Village of Rutland*, 61 Vt. 336.

The trustees and street commissioner of a village are public officers, and the village is not liable for the neglect of those officers in locating a stone crusher too near the highway and breaking stone for its streets outside the village limits.—*Bates v. Village of Rutland*, 62 Vt. 178.

Town Agent.—An officer known as the town agent is chosen annually, at the annual town meeting, whose duty it is to prosecute and defend suits in which the town is interested.

The town may fill a vacancy in the office at a special meeting, and the selectmen may fill such vacancy until an election is had. SS. 2980, 2987, 2988.

Among the special duties required of the town agent is to prosecute a voter who votes more than once at a freemen's meeting. S. 5111.

The town agent has authority to employ counsel to represent the town in civil actions and suits, although not in criminal prosecutions, except as specially authorized by law.

The town agent's duties relate to civil suits only, and not to criminal prosecutions. The latter function is for the town grand juror to perform.—*Burton v. Norwich*, 34 Vt. 345.

A town agent has no authority to settle a suit brought to recover damages for injuries occasioned by insufficiencies of highways and to make a promise to pay damages that would be binding on the town.—*Clay v. Wright*, 44 Vt. 538.

TOWN CLERK.

Election.—The town clerk is chosen from among the inhabitants of the town at the annual town meeting, to serve until the next annual meeting. S. 2980.

In towns having less than four thousand inhabitants, the town clerk is elected by ballot, when required by three voters present. S. 2983.

Upon the written demand of twenty voters filed in the town clerk's office, at least twelve days before the annual meeting, the moderator, town clerk, first constable, selectmen, road commissioners and school directors, are elected by ballot upon one ticket, and a list of the names of persons voting is kept by the town clerk, his deputy, or a member of the board of civil authority designated by him. S. 2984.

Women twenty-one years of age may be elected or appointed town clerk, if they have resided in the town one year next preceding such election or appointment. S. 2982.

Official Bond.—Before entering upon his official duties the selectmen require him to give bond for the faithful performance of his duties, and they may require him to give an additional bond at any time. If the clerk neglects for ten days to give such bonds or either of them, his office becomes vacant. S. 2994.

Such bonds are filed after approval by the selectmen in the town clerk's office and are recorded by him in a book kept by him for that purpose. Public Acts 1898, No. 61.

The clerk is sworn before entering upon his duties and a record of his official oath is made by the clerk of the town. S. 2989.

A vacancy in the office may be filled at a special town meeting, and the selectmen may appoint a person to fill such vacancy until an election is had. A record of such appointment is made in the town clerk's office. SS. 2987, 2988.

The selectmen have no authority to make a new appointment to any town office unless a vacancy occurs in one of the modes specified in the statute.—*Cummings v. Clark*, 15 Vt. 653.

Election, Certificate of, Deposit.—He shall within six days after his election or appointment deposit with the clerk of his county a certificate

of his election signed by the moderator of the town meeting at which he is chosen, or, if appointed, a certificate signed by the selectmen making the appointment, and shall also deposit a copy of his official oath, signed by himself with a certificate of the magistrate administering the same, that he has taken such oath. S. 2998.

Assistant Appointed; Duties.—The town clerk immediately after his election appoints an assistant clerk for whose official acts he is responsible, who holds his office until another is appointed. Such appointment is recorded in the town clerk's office. S. 3013.

Such assistant clerk is sworn and has the same power to certify records and copies as the clerk, and during the absence or temporary disability of the town clerk performs the duties of the clerk. S. 3014.

Each assistant town clerk shall deposit with the clerk of his county a copy of the record of his appointment duly certified by the town clerk making such appointment, and also a copy of his official oath, signed by himself, with a certificate of the magistrate administering the same, that he has taken such oath. S. 3015.

A writ against a town may be served by leaving a copy with one of the selectmen, if the town clerk is absent from the state, notwithstanding there is an assistant town clerk in the town duly qualified,—he is the mere clerk or servant of the town clerk.—*Charleston v. Lunenburg*, 21 Vt. 488.

An assistant town clerk is not a proper person on whom to make service of a writ against a town. He is not strictly an officer of the town.—*Fairfield v. King*, 41 Vt. 611.

Accounts Settled Annually.—Town clerks shall annually settle their accounts with the auditors of the town on or before the first Tuesday of March. If any clerk refuses or neglects to make such settlement in any year, he shall be ineligible to re-election to the same office for the year ensuing. S. 3062.

Record Proceedings.—Town clerks shall record the votes, resolutions and by-laws passed at town meetings and the names of persons elected to town offices. S. 2999.

A town clerk may correct an error in his record, so it be according to the truth.—*Durfey v. Hoag*, 1 Aik. 286.

Acknowledgments Taken; Administer Oaths.—Town clerks may take acknowledgments of deeds and other instruments throughout their counties and may administer oaths when the instrument to be sworn to is returnable to their office. S. 3012.

A town clerk may administer an oath to a chattel mortgage, which is to be recorded in his office.—*Wright v. Taplin*, 65 Vt. 448.

Actions Against Clerk or Town, Limitation.—Actions against a town or town clerk to recover damages for neglect of duty of a town clerk in relation to a deed, execution or other instrument, delivered to him, or left in his office for record, shall be brought within six years after a final decision based upon such neglect against the right, title, or claim

of the party under such deed, execution, or instrument, and not after. S. 1200.

Association Articles of a Corporation.—The copy of articles of association certified by the secretary of state shall be recorded in the office of the clerk of the town in which the principal place of business of the corporation is to be located in a book kept for that purpose. S. 3706.

Attachments; Index.—Each town clerk shall keep a book in which shall be alphabetically indexed all attachments of personal property lodged in his office; and said index shall show the names of the parties to the suit in which the attachment is made, the court and date of the court to which the attachment is returnable, and the amount of debt or damages claimed in the writ. S. 3004.

Attachment on Logs.—Attachments on logs shall be made by leaving a copy of the process in the office of the clerk of the town where the services were performed and also where the logs are. S. 2284.

Personal Property.—When personal property is taken upon a writ of attachment or execution, the officer serving such process may lodge a copy of the same, with his return, in the clerk's office in the town where the property is taken; and such clerk shall enter in a book to be kept by him, in alphabetical order, the names of the parties, the date of the writ, the time when and the court to which the same is returnable, and the amount demanded. SS. 1103, 1107.

Statute of 1818 provided that when hay or grain in the straw were attached, a copy was to be left in the town clerk's office, which was as effectual to hold the property against subsequent sales or attachments as actual removal and custody by the officer.—*Stanton v. Hodges*, 6 Vt. 64.

Leaving a copy of the writ of attachment with the town clerk is the act of attaching and taking possession and giving notice to all concerned.—*Putnam v. Clark*, 17 Vt. 82; *Barron v. Smith*, 63 Vt. 121.

In order to give an officer constructive possession of personal property attached by leaving a copy with the town clerk, it is only necessary that the property should be described with reasonable certainty.—*Bucklin v. Crampton*, 20 Vt. 261.

When property is attached by leaving a copy of the writ in the town clerk's office, the want of a return, or a defective return, upon the copy so left will render the attachment ineffectual, for the reason that the return is all that constitutes the attachment, and without it it is impossible to determine the property attached.—*McKenzie v. Ransom*, 22 Vt. 324.

Replevin, trespass and trover by any other person except the debtor, will lie against an officer attaching by copy in the town clerk's office.—*Angell v. Keith*, 24 Vt. 371.

The liability of an officer attaching property, by leaving a copy of the writ in the town clerk's office, to produce the property that it may be taken in execution, is the same as it would be if he had taken it into his actual possession.—*McK. Ormsby v. Morris*, 29 Vt. 417.

Machinery attached by leaving a copy of the writ in the town clerk's office. *Held*, that an error in the description of the place where the property was did not invalidate the attachment.—*Fullam v. Buck*, 30 Vt. 443.

An attachment of coal merely by leaving a copy in the town clerk's office, in the return of which the only description is "all the coal in the town of B.," is invalid, the description being too indefinite.—*Paul v. Burton*, 32 Vt. 148.

In a return upon a writ a copy whereof is left in the town clerk's office, the only description of the property attached was "all the hay and grain in the town of F." *Held*, that it created no lien upon the property.

The subsequent attachment should be made by the same officer who made the previous ones; he is regarded as having the legal possession and control of the property attached—this rule applies as well to attachments by leaving copy at town clerk's office as to others.—*Rogers v. Fairfield*, 36 Vt. 641.

A return on a writ left in a town clerk's office is inoperative to attach property where it is described as being all the property of its kind in the town.

No subsequent attachment can be legally made by another officer while the first attachment remains in force, but the officer making the first attachment may make subsequent ones.—*West River Bank v. Gorham*, 38 Vt. 649.

A copy of a writ of attachment left in a town clerk's office described property merely as five cows on the premises of a railroad. There were seven cows when defendant supposed he had but six. Plaintiff, at the suit of others, attached one of the cows that defendant intended to describe, one that he knew and described as a small, light-red cow. Afterwards, within twenty days of his attachment, defendant took the five cows and sold them regularly on the writ. *Held*, that defendant was not bound to describe each cow so particularly that a subsequent attaching creditor could not err in determining which he had attached.—*Brooks v. Farr*, 51 Vt. 396.

The copy of a writ of attachment left with the town clerk must describe the property with reasonable certainty, such as will inform the debtor and those with whom he may deal that it is attached. So with the return indorsed upon it.—*Pond v. Baker*, 55 Vt. 400.

The county court has the power to order a cause in which judgment has been rendered at a former term to be brought forward on to the docket and allow the sheriff to amend his return as to the attachment of property, *provided*, that the rights of *bona fide* purchasers or attaching creditors have not intervened.—*Pond v. Campbell*, 56 Vt. 674.

Property left in possession of a debtor may be held under attachment forty days by leaving a copy of the writ in the town clerk's office, and may be attached by another after the forty days have expired.—*Pond v. Baker*, 58 Vt. 293.

Real Estate.—When real estate is attached, the officer serving the writ shall leave a true and attested copy of the same with a description of the estate so attached in the office of the town or county clerk, and such clerk shall enter in a book to be kept for that purpose, the names of the parties, the date of the writ, the time when and the court to which the same is returnable, the nature of the action, the sum demanded and the officer's return thereon. SS. 1101, 1102.

The deposit of a copy of the attachment with the town clerk by the officer with directions to the clerk to record the substantial part is sufficient, and a slight variance in the copy left from the original does not destroy the effect of the attachment.—*Huntington v. Cobleigh*, 5 Vt. 49.

The return of a sheriff that he had left a "like copy of the writ" in the town clerk's office, and had caused the material part thereof to be recorded: *held*, that such an attachment did not create a valid lien on the lands, it not appearing that a description of the estate had been also filed with the town clerk.—*Cox v. Johns*, 12 Vt. 65.

In a case begun by trustee process, the writ itself designates the property to be attached, and the delivery of a copy is sufficient notice to make the attachment effectual.—*McKenzie v. Ransom*, 22 Vt. 324.

The making of the record or entries respecting it, which it is the duty of the town clerk to make, does not constitute any part of the attachment itself.—*Braley v. French*, 28 Vt. 546.

Where the defendant does not reside in the state, the statute requires another copy of the attachment and description of the estate with the officer's

return thereon should be lodged in the town clerk's office, for the defendant.—*Washburn v. N. Y. & Vt. M. Co.*, 41 Vt. 50.

In a case where the town clerk took no custody of the copies of an attachment left in his office, did not safely keep them, and made no record of the attachments, and through his fault the copies were lost or taken from the office, and no trace of the attachments was left there, *held*, that no lien was created as against subsequent purchasers.—*Burchard v. Fairhaven*, 48 Vt. 327.

Auctioneers' Licenses.—The town clerk shall record licenses granted to auctioneers in a book kept by him for that purpose. S. 4745.

Births, Marriages, and Deaths, Certificates.—Town clerks shall receive, number and file, in the order in which they have occurred, all certificates of births, marriages and deaths, in their respective towns; they shall preserve all certificates of births, marriages and deaths, and all burial, removal and transit permits returned to them under this act.

Town clerks shall at least once in five years procure all certificates and permits received by them under the provision of this act to be bound in volumes of convenient size and indexed, and the same, as well as said certificates and permits before being bound, shall be kept and remain in each town clerk's office as permanent records. Marriage certificates shall be bound in one volume or series, birth certificates in another volume or series, and death certificates, burial, removal and transit permits shall be bound in another.

Returns to State Board of Health.—Town clerks shall semi-annually, in the months of February and August, transmit to the secretary of the state board of health, a certified copy of each birth, marriage and death certificate received by them during the six months last preceding the first days of January and July respectively of each year in which the copy is made, such copy to be upon blank forms furnished by the secretary of the state board of health.

The town clerk, upon the receipt of the certificate of birth, if the name of the child has not been reported, shall, except in cases of still-birth, immediately forward to the father or mother of such child a copy of the certificate as filed, on a form to be furnished by the secretary of the state board of health for that purpose, that the name of the child, and any other facts not reported in the physician's certificate of birth, may be inserted, and that any errors therein may be corrected. Such blank form shall have printed upon it proper instructions and also the penalty for neglect to comply with the provisions of this section. The father or mother shall fill in the full name of the child and any other facts not given in the physician's certificate, shall correct any errors therein, and return the blank to the town or city clerk within thirty days from the date of birth of such child, which name and all other facts shall be inserted, and errors, if any, corrected by said town clerk in the corresponding certificate of birth. Acts of 1904, No. 140, SS. 2, 8.

Books and Documents.—Session laws and other books, pamphlets and documents received by the town clerk shall be by him distributed and delivered to the persons entitled to receive the same. SS. 5440, 5445.

Books, Papers, etc., to his Successor.—When the office of town clerk becomes vacant by expiration of the term of office, or otherwise, and a successor of the incumbent is elected or appointed, he shall, on demand, be entitled to receive the records, files, books and papers of such office, or property of the town, belonging thereto from the last incumbent of the office or any one having possession of the same. S. 3061.

Chattel Mortgages, Records.—Town clerks shall procure and keep a book of records for mortgages of personal property; record therein any mortgage, transfer or discharge, and the officer's return of sale upon any mortgage; and keep an alphabetical index of mortgagors and mortgagees, which record and index shall be open to public inspection. S. 2258.

A chose in action cannot be mortgaged.—*Woodward v. LaPorte*, 70 Vt. 399.

The mortgagor of personal property does not abandon his lien by purchasing the goods under an arrangement with the mortgagee that he shall resell them and apply the proceeds to the discharge of the liability.—*Enright v. Amsden*, 70 Vt. 183.

Check-List for Additional Polling-Places.—The town clerk of a town having additional polling-places shall furnish such places with the subdivided check-list provided by section 2 of this act; and the presiding officer of such a town who shall be the presiding officer of said central polling-place, shall distribute the ballots received by him for such town to be used at each biennial or presidential election to the presiding officers of such additional polling-places in the proportion required by the number of voters on such subdivided lists.

Said subdivided check-list shall be posted in some public place in said village wherein is established said polling-place, at least thirty days prior to freemen's meeting and a copy thereof shall be lodged with the clerk of the town, wherein such polling-place is established. When said check-list has been fully revised and completed, it shall be filed in the town clerk's office and two certified copies of the same shall be seasonably delivered to the election officers of said polling-place, and such check-list shall in all other respects conform to the provisions of the laws of this state relating to check-lists of voters, and any person whose name is not upon any of said check-lists shall not be allowed to vote at any freemen's meeting in said town. Acts of 1904, No. 5.

Civil Authority, Board.—The town clerk, selectmen and justices residing in a town, shall constitute the board of civil authority of such town. Meetings of the board shall be called by the town clerk, or by either of the selectmen on application, by giving personal notice to each member, or by posting a notice in three or more public places in the

town at least five days previous to the meeting. The acts of a majority of the board present at a meeting shall be treated as the action of the board. S. 3038.

Conditional Sales, Lien.—The written memorandum of personal property sold conditionally shall be recorded in the office of the clerk of the town where the purchaser resides, if he resides in the state; otherwise, in the office of the clerk of the town where the vendor resides, within thirty days after such property is delivered. S. 2290.

Actual notice of the lien has the same effect as a record under the statute.—*Kelsey v. Kendall*, 48 Vt. 24.

Plaintiff made a conditional sale of a mill. Defendant attached the mill in the hands of the vendee. The writing stating conditions of sale was made December 21, 1871, and recorded in the town clerk's office on 22d of December, 1871. The purchaser took the mill on trial some time before, but did not decide to keep it till December 21st. *Held*, that there was no delivery of the mill till that date and the record was made in time.—*Cole v. Howe*, 50 Vt. 35.

The lodgment for record in the town clerk's office of a memorandum of sale witnessing a lien reserved on personal property sold conditionally, is equivalent for purposes of notice to actual record—this where the paper was left with the town treasurer acting for the town clerk who was absent.—*Fairbanks v. Davis*, *Ibid.* 251.

The increase of an animal sold on condition, belongs to the vendor, and no memorandum to that effect is necessary, where the increase accrues, a colt is foaled, before the performance of the condition.—*Clark v. Hayward*, 51 Vt. 14.

A record of a memorandum witnessing a conditional sale made more than thirty days after delivery of the property is ineffectual to charge notice upon attaching creditors.—*Bugbee v. Stevens*, 53 Vt. 389.

Trover for conversion of a mare and colt on which plaintiff had an original vendor's lien. *Held*, that refusal to deliver on demand of plaintiff was conversion and plaintiff had a claim for damages.—*Hill v. Larro*, *Ibid.* 629.

A lease in which one year's rent was equal to payment for the organ sold was held to be a conditional sale, and should have been recorded in order to preserve a vendor's lien. An attaching creditor of the vendee had no notice, actual or constructive, of the terms of sale—attachment sustained.—*Whitcomb v. Woodworth*, 54 Vt. 544.

If the attaching creditor has notice of the vendor's lien, he takes nothing by the attachment, no matter how he gets the notice.

A comma in the original act not in the printed copy governs in the construction of it.—*McPhail v. Gerry*, 55 Vt. 174.

The vendor does not forfeit his rights by accepting payment on a note after it is due, and may take the property; the bringing of the suit is a sufficient demand.—*Matthews v. Lucia*, *Ibid.* 308.

A conditional sale of oxen—memorandum of sale recorded; oxen sold by vendee without knowledge of vendor, *held*, that the purchasers could not show part payment in mitigation of damages, having constructive notice that the vendee had no title when he sold to them.—*Morgan v. Kidder*, 55 Vt. 367.

When one is in lawful possession of property on which there is a lien commingling it—in this case honey—with his own, it is not a conversion, and demand is necessary; but in such a case, claiming to own it and selling it after a demand, is conversion. The whole of the property on wilful commingling is the lien-holder's and he can recover for what his lien covered.—*Burnham v. Marshall*, 56 Vt. 365.

A conditional sale made in Vermont—no record as the statute requires. *Held*, that the vendor had no lien on the property for the purchase money.—*Collender Co. v. Marshall*, 57 Vt. 232.

There were two tenants in common, owning the horse, and a record of the lien of one who sold his half-interest to the other half-owner, Nichols. Nichols sold to Hurd; Hurd took a good title to Nichols' half; but the other

owner had still his lien on the other half, so both are cotenants of the horse.—*Barber v. Richardson, Ibid.* 408.

Where one with notice purchases personal property on which there is a valid lien recorded, of a conditional vendee, and sells it, he is liable in trover.—*Church's Administrator v. McLeod*, 58 Vt. 541.

A bill of sale, absolute on its face, of personal property cannot be shown to be conditional by parol testimony.

A sale good as conditional in New Hampshire will be accepted and treated as such in Vermont.—*Dixon v. Blondin, Ibid.* 689.

One who seeks by attachment to appropriate the property of a conditional vendor to the payment of a debt of the vendee, must bring himself within the terms of the statute, and must therefore show affirmatively that he had no notice of the lien.—*Singer Manufacturing Co. v. Nash*, 70 Vt. 434.

Corporations, Capital Stock Certificates.—Before a corporation commences business a certificate of the capital stock paid in shall be filed in the office of the secretary of state, and a certified copy thereof filed with the clerk of the town in which the principal place of business of said corporation is located. S. 3722.

Capital Stock, Increase or Reduction.—If a corporation increases its capital stock a certificate thereof shall be filed with the secretary of state, and a certified copy thereof returned and recorded in the town clerk's office in the same manner as the original articles of association. S. 3729.

When a corporation reduces its capital stock a certificate thereof shall be filed with the secretary of state and recorded, and a certified copy of the same returned and recorded in the town clerk's office in the same manner as provided in case of an increase of capital stock. S. 3731.

The president and directors of a corporation are liable personally for debts contracted during the period of their refusal to comply with the law as to publication of the act of corporation and filing of a certificate with the town clerk.—*Dooley's Assignees v. Sanford*, 53 Vt. 632.

Deeds, etc., Note Time of Receiving for Record.—When a deed or other instrument is left for record in the office of the town clerk, he shall enter upon the record thereof the day and time of day when the same was received, and shall indorse upon such deed or instrument a certificate of the same fact; and he shall make a similar entry upon any paper left on file in his office. S. 3011.

The certificate of a town clerk on a deed as to the time when it was received in his office pursuant to the statute, is only *prima facie* evidence of the facts recited in the certificate, and may be contradicted by parol proof.—*Bartlett v. Boyd*, 34 Vt. 256; *Johnson v. Burden*, 40 Vt. 567.

Deeds, Writs, etc., Record.—They shall record at length, in books to be furnished by the town, deeds and instruments and evidences respecting real estate, and writs of execution, and other writs or the substance thereof, and the returns thereon, which are delivered to them for record; and they shall keep in each of the books of record, an index of reference to the instruments or records in such books. S. 3000.

The town is liable for damages sustained by any one in consequence of neglect by the town clerk to keep the index of records of instruments respecting titles to lands as required by law.—*Hunter v. Windsor*, 24 Vt. 327.

Where the mortgagee left his mortgage with the town clerk for record and the clerk recorded the same at length and so certified upon the mortgage, but made no alphabet or index of the mortgage, it was *held* that the mortgage was properly recorded within the meaning of the statute, and that the alphabet or index constitutes no part of the record; and the mortgage became an incumbrance upon the land from the time it was transcribed upon the record.—*Curtis v. Lyman*, *Ibid.* 338.

Neglect of the town clerk to make the proper reference in the index to a particular record in his office will furnish no cause of action to one who never examined the records, and whose want of knowledge respecting that particular record was in no way due to such a defect in the index.

False representations made by the town clerk in reference to the records in his office will not excuse a person from making an examination of them or from requesting the town clerk to show them to him.—*Lyman v. Edgerton*, 29 Vt. 305.

Character of index required.—*Smith v. Royalton*, 53 Vt. 604.

An index is not necessary to the validity of the record of a mortgage; thus a mortgage was recorded but not indexed; a subsequent mortgage was executed and assigned to defendant, who purchased without notice. *Held*, that the first mortgage was superior to the second and could be foreclosed.—*Barrett v. Prentiss*, 57 Vt. 297.

Deeds, Index.—They shall keep a general index to the books of records of deeds wherein they shall enter in one column, in alphabetical order, the name of the grantor to the grantee and in a parallel column, the name of the grantee from the grantor, of every deed or conveyance of land recorded, with the number of the book or volume, and the page of record in the form given in the statute. S. 3001.

When a town clerk copies a deed delivered to him for record on a book which has ceased to be a book for recording for a number of years, and does not insert the names in an alphabet, for the purpose of concealment and fraud, such deed is not recorded and is no notice to after purchasers or attaching creditors.—*Sawyer v. Adams*, 8 Vt. 172.

Where a town clerk refused to show the records when requested so to do, and concealed the fact of an incumbrance upon property, and a party purchasing the property was injured and incurred loss thereby, *held*, that the injured party could maintain a joint action on the case against the clerk and the town to recover damages for the loss sustained by him.—*Lyman v. Windsor*, 24 Vt. 575.

Failure by a town clerk to make proper reference in the index to a particular record in his office; false representations as to the records not being official acts; neglect of the town clerk, innocently or fraudulently, to disclose the existence of a mortgage upon premises which a party is negotiating for, respecting which the clerk has personal knowledge, do not render a town liable to the injured party.—*Lyman v. Edgerton*, 20 Vt. 305.

If after making examination of the town records to learn the state of the title to land, and finding no incumbrance of record, the agent of another inquires of the town clerk if he knows of any incumbrance and requests him to show it, the clerk knowing of the existence of an incumbrance replies that there is none, and shows none, and the inquirer, relying on such reply, makes a loan for his principal on the security of a mortgage on the land, the clerk and the town are both liable for any loss incurred thereby.—*Jarvis v. Barnard*, 30 Vt. 492.

The index required should be such as a man of ordinary intelligence, of fair business capacity would require to make a search.—*Smith v. Royalton*, 53 Vt. 604.

Dogs.—The owner or keeper of a dog, more than four weeks old, is required annually, on or before the first day of April, to cause it to be

registered, numbered, described, and licensed, for one year from that date, in the office of the town clerk of the town wherein such dog is kept. All dogs not four weeks old, on that date, are exempt from license until the following year.

The town clerk issues licenses for dogs upon payment of fees required by law, which he pays into the town treasury, retaining a small sum for his own use, and makes returns verified by oath of the amount of money so received and paid over. He also keeps a record of the licenses issued, and of the names of owners and keepers and the description of the dogs licensed by him.

The town clerk is forbidden to license a dog known to be vicious or to have done damage, and may not license a dog against which complaint has been made to him in writing, until directed so to do by the selectmen of the town. SS. 4821-4824.

In an action by the town treasurer against the owner of the dog under section 4049, the measure of damages is the actual damage, not the amount of the appraisal.—*Fairchild v. Rich*, 68 Vt. 202.

One who permits a dog to be housed and fed upon his premises, and to become, as far as domestic animals may, a member of his family, is to be regarded as its keeper, and liable for injuries inflicted by it, if he has notice of its vicious propensity.—*Plummer v. Ricker*, 71 Vt. 114.

It being unlawful to keep a dog without a license, and also unlawful to procure a license for a vicious dog, it follows that a vicious dog cannot be kept at all.—*State v. Smith*, 72 Vt. 141.

Drainage Cases.—A certified copy of the report of the selectmen or commissioners, finally accepted by the county court, with the orders and judgments in said court, shall be recorded in the town clerk's office where the lands are situated. S. 3647.

Elections; Ballots Printed.—All ballots required for elections of town officers, representatives to the general assembly, and justices, are printed and distributed at the expense of the town in which they are to be used, under the direction of the town clerk. The ballots so provided, are ready for inspection by the candidates, and their agents, at least five days before the election at which they are to be used.

The law prescribes that such ballots shall be printed on white paper, and contain the names of all persons, certificates of whose nomination have been filed with the clerk, or whose nominations have been certified to him. After the name of each candidate are printed, on the same line, his residence, and the name of the party, or political organization to which he belongs. SS. 95-97.

Notices, Posting; Checking Votes.—The duty of posting notices of biennial elections devolves upon the constable, and in his absence upon the town clerk. S. 111.

The town clerk, or his deputy, in towns where there are not over fifteen hundred names on the check-list, checks the names of persons voting on such lists, or a certified copy thereof, by making a mark

opposite each name for each vote cast, so as to indicate the officers voted for. When there are over fifteen hundred names on the list, the clerk may appoint a sufficient number of deputy-clerks to assist in performing such duty.

When additional sets of ballot-boxes are opened in accordance with section 116, the presiding officer receives the votes at one of said places. At each other place of voting the names of persons voting shall be checked by a deputy-clerk appointed for the purpose by the town clerk.

At general elections, when the town clerk is a candidate for town representative, all the duties imposed upon him, or his assistant, by sections 131, 132, shall be performed by one of the selectmen, or in their absence, by a justice. SS. 121-123.

Election Certificates.— When there is more than one polling-place in a town, and there is no common presiding officer, the certificate provided for in section 134, shall be signed and delivered by the town clerk.

At five o'clock in the afternoon on the day of election, the votes for state officers and for representatives to congress, are counted and a list of the persons voted for, and the number of votes cast, is made up and signed by the presiding officer and the town clerk, if present, and recorded in the town clerk's office.

Certificates of votes for state officers and for representative to congress are each attested by the town clerk, if present at the meeting.

The presiding officer is required as soon after the election as may be, to deliver to the town clerk, the votes cast at any election for state and county officers, representative to congress and representative to the general assembly, together with duplicate certificates of the votes therefor; and the clerk shall keep the same securely sealed, for three years after said election, but, if called for, deliver them to the committee appointed by the general assembly to canvass the same, or to any other person authorized to receive them.

The certificates of votes for state officers and representatives to congress should conform to that prescribed by the statute. SS. 135, 136, 137, 139, 140.

Presidential Electors.— When an election of electors of president and vice-president of the United States has been held, duplicate certificates of the votes cast at such election are made out and attested by the presiding officer. One of these certificates is, within two days after such election, delivered to the town clerk, who files and records the same in his office, and within four days after such election transmits a certified copy thereof to the secretary of state at Montpelier. S. 169.

Subdivided Check-List.— The town clerk of the town having additional polling-places shall furnish such places with the sub-divided check-list, provided by section 2 of this act. Acts of 1904, No. 5, S. 4.

Fences, Agreements and Decisions.—Agreements in writing between owners relating to their division fences, signed by them, witnessed by two witnesses and duly acknowledged; and decisions of the selectmen and of the fence viewers as to division fences under the provisions of chapter 157, duly certified, shall be recorded by the town clerk in a book kept by him for that purpose and alphabetically indexed. SS. 3580, 3581.

Fire Districts.—The certificate by the selectmen of their proceedings in establishing fire districts shall be recorded in the town clerk's office. S. 3152.

Fishing Devices.—A person who discovers unlawful devices for fishing, and seizes and delivers the same to the town clerk, may have from the town clerk, upon proof satisfactory to him that such net or device was discovered and seized by him in good faith, while placed for use in violation of law, an affidavit by the town clerk, upon payment of his fee, attesting the delivery of the net so seized. S. 4594.

Guide Post Locations.—Upon the report of the selectmen, the town shall determine the several places at which guide posts shall be erected and maintained, and the same shall be recorded in the town clerk's office. S. 3089.

Inkeepers' Licenses.—Licenses granted to innkeepers by the selectmen shall not be effectual till recorded in the town clerk's office, the expense of record to be paid by the licensee. If the license be revoked, a certificate thereof shall be recorded, and notice given to the person holding the same. S. 4721.

Itinerant Vendor, Local License.—Any itinerant vendor, before making any sale of goods, wares or merchandise, shall make application to the clerk of the town in which such goods are kept, or to be kept or exposed for sale or sold by him and together with such application shall file a true statement under oath, of the average quantity and value of the stock of goods, wares or merchandise so kept or to be kept or exposed for sale. Such clerk shall submit such statement to the board of listers of such town, who shall forthwith, after examination of such goods, wares or merchandise so kept or to be kept or exposed for sale, place a valuation thereon and transmit a certificate of such valuation to such clerk, who shall submit the same to the board of selectmen as the case may be, who shall forthwith act upon such application; and if in the judgment of such board such application should be granted, such town clerk may be authorized to issue a license to such applicant, and such clerk shall thereupon ascertain the amount to be paid for the local license, by a computation based upon the valuation placed by said listers on such stock of goods, wares or merchandise so kept or to be kept or exposed for sale, in the ratio, and at the rate of the last preceding

assessment of taxes, including the state tax, in such town; and upon receipt of the amount so fixed and ascertained shall issue to the person filing or furnishing such statement a local license authorizing the sale of such goods, wares or merchandise within the limits of such town, which license shall be and continue in force so long as the licensee thereunder shall continuously keep and expose for sale in such town such stock of goods, wares or merchandise, except that such license shall in any event terminate and expire on the thirty-first day of March next following its date. S. 4756.

The legislature may impose a license upon one occupation and not upon another so long as no discrimination is made among those engaged in the occupation taxed.—*State v. Harrington*, 68 Vt. 622.

V. S., chapter 198, which exacts a license fee from the peddlers of goods "the manufacture of this state," is unconstitutional, as being an unjust discrimination against the products of this state.—*State v. Hoyt*, 71 Vt. 59.

Jurors' List to County Clerk.—The town clerk shall within five days after the town meeting return by mail to the clerk of the county court, his certificate of election of the persons chosen as grand and petit jurors, therein giving the full name and post-office address of each person. S. 3066.

The qualifications of those who may act as jurors is nowhere prescribed. Formerly they were to be freeholders but that qualification is not now required, but *held*, that an alien is excluded from being a legal jurymen.—*Quinn v. Halbert*, 52 Vt. 353; *Richards v. Moore*, 60 Vt. 449.

Jurors' Names, Record of.—Town clerks shall make a record of the names of grand and petit jurors returned to them by county clerks. S. 1128.

Land Damages, Appraisal.—When an appraisal is made of the value of land taken by a railroad corporation, the commissioners making the same shall cause a statement thereof with a description of the land or other property appraised by them, within thirty days thereafter, to be recorded in the clerk's office of the town where the land or other property is situated. S. 3818.

Lands Sold by Order of Probate Court.—The certificate or copy of the order of sale made by a probate court, shall be recorded in the office of the clerk of the town in which the lands to be sold are situated. S. 2489.

Lumber, Floating, Advertised.—The owner of land or dams upon which lumber is lodged, is required to advertise the same at a public place in the town, and to cause the advertisement to be recorded in the town clerk's office, in the month of September in the same year, or the lumber shall not be forfeited. The clerks' fees for recording such advertisements are paid by the person filing the same. SS. 3663, 3664.

Marriage Certificates Issued.—Each town clerk shall, upon application, issue to a person a marriage certificate in the form prescribed in

the following section, and at the same time shall enter thereon the names of the parties to the marriage, fill out the blank as far as practicable, and take and retain in his office a copy of the certificate, and when the certificate is returned to his office he shall complete the copy to conform to the certificate, certifying thereto, and such copy shall be at the disposal of the groom or bride. The applicant for a marriage certificate shall be required to sign the declaration of intention contained in the certificate. Acts of 1904, No. 140, S. 11.

Marriage Records, Index to.—Town clerks shall prepare and keep a general index to the marriage records. Said index shall give in alphabetical order the name of the groom and bride, and also in alphabetical order the name of the bride and groom, together with the date of marriage, in the form:

Book 1	Page 1		Groom to Bride A to B		Date
Book 1	Page 1		Bride to Groom B to A		Date

The index to all records prior to February 1st, 1905, shall be prepared at the expense of the town at a per diem fixed by the selectmen.

Town clerks shall prepare and keep a single index of the records of births and deaths in their respective towns, and such index shall be in alphabetical order. The index to all such records of births and deaths prior to February 1st, 1905, shall be prepared at the expense of the town at a per diem fixed by the selectmen, and all records shall be indexed back to 1857 and the state shall furnish a suitable book for such records. Acts of 1904, C. 141.

Town Meetings Called.—If the office of any of the selectmen is vacant, those in office may call the meetings (of the town); and if there are no selectmen who can call the meetings, they may be called by the town clerk. S. 2975.

Notices.—The notice for a town meeting shall be recorded in the town clerk's office before it is posted. S. 2973.

Minor, Indenture.—One part of the indenture, when made with the approbation of the selectmen, or by the overseer, shall be deposited with the town clerk and safely kept in his office for the use of the minor. S. 2837.

Mortgages, Assignments.—When an assignment of a mortgage of real estate or of personal property is recorded, and the mortgage itself is not recorded therewith, the town clerk shall make a memorandum on the margin of the record of such mortgage, giving the number of the book and of the page where such assignment is recorded. S. 3006.

Mortgages of Personal Property.— Town clerks shall procure and keep a book of records for mortgages of personal property; record therein any mortgage, transfer or discharge, and the officer's return of sale upon any mortgage; and keep an alphabetical index of mortgagors and mortgagees, which record and index shall be open to public inspection. S. 2258.

Satisfactions, Record.— They shall record satisfactions of mortgages on the margin of the record of the mortgage or in a suitable book kept for that purpose; certify the time when the same was received for record; keep an alphabetical index of mortgages and mortgagees in the book where such satisfactions are recorded; make entry in the general index kept by them as provided in section 3001; and shall also make a memorandum on the margin of the record of the mortgage discharged, giving the number of the book and of the page where such satisfaction is recorded. S. 3005.

Overseer of the Poor, Account Book.— The book of accounts of the overseer of the poor, when completed, shall be deposited in the town clerk's office, subject to the inspection of the inhabitants of the town. S. 3039.

Partnerships Limited.— The certificate of limited partnership shall be recorded in the town clerk's office of the town in which the principal place of business of such partnership is situated, in a book to be kept for that purpose, open for public inspection; and if the partnership has places of business in different towns, such certificate shall be recorded in each of said towns. S. 4279.

Upon a renewal or continuation of a limited partnership, a certificate thereof shall be made, acknowledged, recorded and published as provided for the original formation of limited partnerships. S. 4281.

Notice of dissolution of a limited partnership must be recorded and published as the original certificate is directed to be recorded and published. S. 4285.

Power of Attorney to Convey Land.— No deed or other conveyance of lands or of an estate or interest therein, made by virtue of a power of attorney, shall be of any effect or be admissible in evidence unless such power of attorney is signed, sealed, witnessed, acknowledged and recorded in the office where by law such deed is required to be recorded. S. 2221.

Where a conveyance of land is executed by virtue of a power of attorney, the power must accompany the grant upon the records in order to connect the grant with the grantor; otherwise the attorney in fact can convey no title to the land. A record of a copy of such power of attorney is without warrant of law and unavailing.— *Oatman v. Fowler*, 43 Vt. 462.

Railroad Aid, Vote for.— The vote and assent to aid a railroad shall be certified by the commissioners and recorded by the town clerk at length in the records of the town. S. 3107.

Railroad Locations.— Before a railroad corporation commences proceedings to acquire a right of way, it shall cause the location of its road to be recorded in the clerks' offices of the towns through which it passes. S. 3809.

Where a landowner agrees with a railroad company upon his compensation for land taken in locating the road and permits the company to take possession of the land, he cannot thereafter take advantage of the omission of the company to have a certificate of the survey recorded in the town clerk's office as required by the charter.— *Railroad Co. v. Potter*, 42 Vt. 265.

A railroad company by causing the location of its road to be recorded in the proper office acquires a prior right to construct its road on the line of such survey, as against another company which subsequent to such record, but before the condemnation of the land, has purchased it from the owner.— *Barre Railroad Co. v. Railroad Companies*, 61 Vt. 1.

The locations of variations in parts of a railroad shall be filed and recorded in the offices of the clerks of the respective towns where such parts are situated. S. 3828.

Where a railroad company changes the line of its road, the change operates as an abandonment by it of the land upon the line deviated from, so that they can no longer claim any right or interest in it or any easement growing out of it.

If the company has no vested right in the land, the owner has none to the price to be paid for it, or the damages to be awarded for it.— *Stacey v. Railroad Co.*, 27 Vt. 39.

Real Estate, Probate Decrees.— Certified copies of all final orders or decrees of a probate court relating to real estate shall be recorded in the office of the clerk of the town where by law a deed of such real estate is required to be recorded. S. 2581.

Records, Copies of.— A town may cause any of the records or papers in the clerk's office to be copied by the clerk under the direction of the selectmen, in a book for that purpose and certified as true transcripts; and if the originals are lost or destroyed the transcripts shall be treated as originals and may be certified and used as such. S. 3007.

Copies Furnished.— The town clerk shall furnish certified copies of any instrument on record in his office or any instrument or paper filed in his office pursuant to law, on the tender of his fees therefor; and his attestation shall be a sufficient authentication of such copies. S. 3008.

The officer's affidavit and the certified copy of the record of the writ and return left in the town clerk's office were admissible as evidence on the hearing of the petition.— *Pond v. Campbell*, 56 Vt. 674.

Copies for Secretary of State.— Upon notice from the secretary of state that any certificate is lacking, the clerk of the town from which certificates are lacking shall immediately make an attested copy of the record in his office of such lacking certificates, and transmit the same by mail to said secretary of state. S. 147.

Reports Furnished to Libraries.— The clerk of each town shall each year supply any library in the town in which he lives with two copies

of the annual reports (if printed) of his town, village or city; and shall also send to the state library for its use two copies of the same. Said copies shall be so delivered by the clerk within two weeks after receipt of such printed reports by him. S. 897.

Road Mileage.—The certificate of road mileage of the town shall be recorded in the office of the town clerk, who shall within five days forward a certified copy thereof to the secretary of state. S. 3439.

School Directors, Clerk Prosecute, When.—If a clerk of the board of school directors or of an incorporated school district fails to make the required return, or makes an incomplete or incorrect return, he shall receive no compensation therefor and be fined not less than five dollars; and the town clerk shall forthwith cause prosecution to be commenced against him in the name of the state to recover such fine. S. 2869.

Schools, Record of Land.—All orders and proceedings of the selectmen, under the provisions of sections 812 and 813, with the survey of the land taken shall be recorded in the office of the clerk of the town in which the land is situated, or if in an unorganized town or gore, in the county clerk's office. S. 814.

Schools, Report Number to Superintendent of Education.—Every town clerk shall on or before the first day of June of each year, furnish to the superintendent of education, on a blank to be supplied by him for that purpose, a certified statement of the number of legal schools maintained the preceding year in his town; and the superintendent of education shall forthwith transmit such statements to the state treasurer. In case of failure on the part of its clerk to comply with the provisions of this section, a town shall not be entitled to a share of the tax herein assessed. S. 761.

School Statistics, Returns to State Superintendent.—The town clerk shall, annually, in the month of April or at such time as the superintendent of education directs, make out and return to him such statistics as he requires upon blanks furnished by the superintendent of education who shall receipt therefor. S. 730.

Sewers, Assessment.—An assessment upon a real estate owner benefited by the construction of a sewer, drain or outlet, when made up and signed by the selectmen or a majority of them, shall be recorded in the town clerk's office. S. 3655.

Taxes; Grand List, Abstracts.—The town clerk compares the abstract with the grand list, and if he finds it correct, and that the total value of real and personal estate and the number of polls are the same in the abstract as in the grand list, he so certifies on the abstract; and if he finds that it is not correct, he so certifies and states wherein, and the changes necessary to make the abstract conform to the grand list. S. 455.

The clerk is required to transmit such abstracts on or before the first day of July, annually, to the secretary of state. S. 456.

The time of transmitting such abstracts to the secretary of state is by law extended in towns of 1500 and less than 2500 inhabitants, five days; in towns of 2500 and less than 3500 inhabitants, ten days; in towns of 3500 and less than 5000 inhabitants, fifteen days; in towns of 5000 and less than 8000 inhabitants, twenty days; and in towns of 8000 and more inhabitants, twenty-five days. The number of inhabitants is determined by the United States census last completed before making the list. SS. 451, 452.

Inventory Blanks.—Each town clerk shall, with the aid of the listers, distribute at the annual meeting, a blank inventory to each person, liable to taxation in the town, who is present at the meeting. S. 404.

Inventories Filed; Inspected.—The inventories filled out by taxpayers and taken up by the listers are required on or before the first day of June, in the year in which they are taken up, to be lodged in the office of the town clerk, there to remain for twelve months, after which time any tax-payer who has paid without protest all the taxes to which his inventory relates, and nothing appearing which requires the retention of it for any purpose, may, on application to the town clerk, have his inventory returned to him; and the town clerk is required to keep a record of the date of its return to the maker, and after three years he may destroy all inventories remaining in his office. S. 440.

The town clerk shall allow the listers, selectmen, the town grand jurors, or attorney of the town, or the state's attorney of the county, to examine any inventory they may name, and shall permit each taxpayer to examine his own, but he shall not allow any other person to inspect such inventories, except that they may be produced in court by the clerk upon subpoena for that purpose. The clerk shall not disclose the contents of such inventories, except as above mentioned. S. 442.

Redemption of Lands.—If the owner of lands sold for taxes, his representatives, or assigns, within one year from the day of sale, pays or tenders to the collector who made the sale, or in case of his death or removal from the town, where the land lies, to the town clerk of such town, the sum for which the land was sold with twelve per cent interest thereon, no deed of the land shall be made to the purchaser, but the money paid or tendered by the owner to the collector or town clerk, shall be paid over to said purchaser on demand. S. 488.

Transfers of Real Estate.—Town clerks shall prepare for the use of the listers, a list of the transfers of real estate in the town, including mortgages, commencing on the second day of April in each year, and ending on the first day of April in the following year, with the names of the grantor and grantee, the number of acres included in each

transfer, and, if a mortgage, the amount secured by each party to such mortgage, and such other information as they are able to give as to such transfers. S. 422.

Sale, Advertisement Recorded.—The advertisement shall be recorded in the town clerk's office, and the clerk shall certify whether the same has been published as required by law, which record and certificate shall be sufficient evidence that such advertisement has been duly published. S. 497.

Returns.—The town collector who sells such lands shall make a list thereof certified by him, designating the time when, the person to whom, and the sum for which each piece of land was sold, and leave the same for record in the office of the town clerk within thirty days from the day of sale, who shall record the same within ten days thereafter. S. 499.

Tax Rates Returned to Secretary of State.—On or before the fifteenth day of July, annually, town clerks shall make and transmit to the secretary of state a statement showing the average rate per dollar, and the total amount of taxes assessed in the school and fire districts and villages in their respective towns; also a statement of the rate per dollar, and the amount of taxes assessed in their respective towns, for and during the year ending with the last day of June next preceding. S. 462.

Town Officers, Names to State Treasurer.—Each town clerk shall transmit to the state treasurer by the first day of July, annually, the names of the collector of taxes, first constable and treasurer of his town. S. 3010.

TOWN TREASURER.

Election; Bond.—A treasurer is chosen annually at the annual town meeting. In towns of less than four thousand inhabitants, he is elected by ballot when required by three voters present. SS. 2980, 2983.

A town treasurer cannot be constable or collector of taxes. S. 3050.

The selectmen shall require the treasurer, before he enters upon his official duties, to give bond to the town in a sufficient sum and with sufficient sureties conditioned for the faithful performance of his duties; and if the selectmen at any time judge the bond to be insufficient, they may in writing require him to give an additional bond in such sum as they deem necessary. S. 2994.

Accounts, Payments.—The town treasurer shall keep an account of moneys, bonds, notes, and evidences of debt paid or delivered to him, and of moneys paid out by him for the town, in books which shall at all times be open to the inspection of persons interested.

He shall pay orders drawn on him by the selectmen or overseer of the poor, and if he does not pay any such order on demand the holder

thereof may recover the amount from the town, with interest from the time of such demand. SS. 3043, 3044.

Town orders payable to A. B., or bearer, are negotiable, and after demand and refusal of payment may be sued on by an indorser.—*Dalrymple v. Whittingham*, 26 Vt. 345.

Orders drawn by the selectmen in their own favor and reported by the town auditors as liabilities of the town were repudiated by vote of the town. *Held*, that the auditors had no authority to audit such claims and the selectmen could not audit and pass claims against the town in favor of themselves.—*Davenport v. Johnson*, 49 Vt. 403.

Auditors, Settle With.— He shall settle with the auditors immediately previous to each annual meeting, and on going out of office, immediately thereafter; and when his term of office expires he shall, if not re-elected, pay to his successor the funds of the town in his hands. SS. 3048, 3062.

If a balance is due the treasurer going out of office, the auditors shall draw an order therefor on the town treasury; or if the treasurer is re-elected they shall give him a writing authorizing him to credit himself such sum. S. 3049.

Burial-Grounds; Funds.— The proceeds of sale of cemetery lots shall be paid into the town treasury and kept separate from other funds of the town, and subject to the order of the commissioners; and with the income thereof, shall be devoted to keeping in order, improving and embellishing such burial-grounds under the direction of the commissioners. S. 3596.

Cemetery Trust Funds.— Cemetery trust funds shall, unless otherwise directed by the donor, be paid to the town treasurer, who shall give a receipt therefor, which shall be recorded in the office of the town clerk in a book kept for that purpose. In such book shall be stated the amount received from each donor, and the specific purpose to which the use thereof is appropriated. S. 3603.

Collector, Separate Account.— He shall keep with the collector of taxes a separate account of each tax-bill; shall charge him with the amount thereof; credit him with payments thereon, the amount allowed him for collecting the tax and the abatements allowed by the board of civil authority, giving the date of each. S. 3045.

Criminal Prosecutions; Payments of Fees.— He shall not pay orders drawn by a justice for fees in criminal prosecutions, until he has received the return which such justice is required by law to make to him; and such fees shall be paid to the persons entitled thereto upon the order of the justice, if called for within one year from the date of such return. S. 3046.

A justice who draws orders on the town treasury to pay the costs of a prosecution tried before him in favor of several persons entitled to the same, is not entitled to *mandamus* against the town treasurer to compel payment of such order to himself; the legal right is in the payees of the orders.

Nor will *mandamus* lie in favor of a justice against the town treasurer to

compel payment of an order drawn in his favor for fees, when the fees for which it was drawn were in part illegal.— *Cook v. Treasurer of Peacham*, 50 Vt. 231.

Dog License Money.— The town treasurer shall keep an accurate and separate account of moneys received and expended, under the provisions of this chapter. S. 4827.

He shall annually on the first Wednesday of January pay all orders drawn by the selectmen, during the month of December, transmitted to him in payment of bills for damages inflicted by dogs, in full, if the gross amount received by him and not previously paid out, under the provisions of this chapter, is sufficient therefor; otherwise he shall divide such amount proportionately among such orders, in full discharge thereof. SS. 4839, 4840.

He shall keep an account of the amount paid into the treasury each year on account of licenses, which shall constitute a dog fund; and if in any year the amount is not sufficient to pay the orders for damages to sheep and other domestic animals, such deficiency shall be paid from the town treasury, provided there is sufficient balance in favor of such fund. S. 4845.

The surplus of moneys received from dog licenses may be applied to the payment of any town expense, after the first Wednesday of January in each year. S. 4844.

Interest, to Stop.— When a town has outstanding orders on demand or overdue, or which would on presentation be immediately payable, drawn on the treasurer by an officer authorized by law to draw such orders, the treasurer may give notice by publication that such orders will be paid on presentation at his office on a day or before a day named in the notice, and that after said day named such orders shall cease to draw interest; or by a like notice signed by the treasurer and delivered to the holder of any such order. SS. 3051, 3052, 3053.

Refunding Town Bonds.— Such notes or bonds shall be signed by the selectmen and countersigned by the treasurer of the town. If interest coupons are attached, they shall be signed by the treasurer; the notes or bonds shall contain a statement that they are issued for the purposes mentioned, and in conformity with the provisions of this chapter. Such statement shall be conclusive evidence of the same, and of the liability of the town to pay such notes or bonds in an action by a person who, in good faith, holds the same. S. 3113.

The treasurer of the town shall keep a record of every note or bond issued under this chapter, stating therein the number and denomination of each note or bond, when issued, when and where payable, to whom issued, and the rate of interest thereon; and also shall keep a record of payments of interest or principal, and if coupons are taken up, shall deface the same. S. 3114.

When old notes or bonds are taken up, as provided in this chapter, the treasurer of the town shall keep a record of the same, and such old notes or bonds be canceled. S. 3115.

School Funds, Separate Account.— The town treasurer shall keep a separate account of the moneys appropriated or given for the use of schools, and shall pay out of such moneys orders drawn by the board of school directors for school purposes. S. 735.

Credits.— The town treasurer shall give credit in his account of the school fund for all sums received by him as income from deposit money. S. 743.

Huntington School Fund, Report on.— Town treasurers shall report at each annual meeting the amount of moneys received for school purposes, the source from which received, and how the same has been divided and paid. S. 752.

Securities.— The securities belonging to the town school fund shall be deposited in the office of the town treasurer, and moneys received on account of the same shall be paid into such treasury; and a separate account thereof shall be kept on the books of the treasurer. S. 757.

Sewer Assessments.— If an assessment remains unpaid for the space of thirty days, the treasurer of the town shall issue a warrant for its collection directed to the collector of taxes, who shall have the same power to enforce the collection, and shall proceed in the same manner as is provided by law for the collection of taxes. S. 3658.

Taxes; Absconding Taxpayers.— The collector shall execute and return the warrant to the treasurer, and the amount collected and his doings thereon, within the time named. If the treasurer makes and files with the officers making the tax-bill an affidavit that a person whose name is thereon is about to remove or abscond from the state, such treasurer may thereupon issue a warrant against such tax-payer for the amount of his tax, although said ninety days have not expired, and the collector shall execute the warrant. S. 485.

Non-residents, Notice to.— Sixty days before the issuance of a warrant against the person or property of a non-resident tax-payer, the treasurer shall give such non-resident notice in writing of the tax and the amount thereof, by delivering the same to him or mailing it to his last and usual place of abode. S. 486.

A treasurer's warrant for the collection of taxes is a returnable process, returnable to the treasurer who issued it. He can allow an amendment of the officer's return thereon, and at almost any time, so that it does not affect rights already acquired on the strength of the return.—*Taylor v. Moore*, 63 Vt. 60.

Taxes, Collection.— If a town, school or fire district or incorporated village, votes to collect its taxes by its treasurer, the proper officers

shall, until otherwise voted, make and deliver all tax-bills to the treasurer of the town, school or fire district, or incorporated village, and the treasurer shall keep separate accounts of all money received as highway or school taxes, and pay out the same upon the orders of the proper officers. S. 480.

Towns must vote each year to collect their taxes through the treasurer, and in case a town does not so vote, its treasurer has no authority to issue his warrant for the collection of a delinquent tax.—*Waite v. Hyde Park Lumber Co.*, 65 Vt. 103.

Where a collector applies moneys collected in a given year to payment of bills of previous years, his sureties are liable the same as if he had applied the money to his own private use.—*Carpenter v. Corinth*, 62 Vt. 111.

Notice to Taxpayers.— Such treasurer shall on receipt of such tax-bills post notices in at least three public places, and publish the same for one week in the public newspapers of the town, if any are there published, calling upon the tax-payers to pay their respective taxes within ninety days from the date of such notice. S. 481.

Discounts; Warrants.— There shall be deducted from the taxes paid during the ninety days, except state and county taxes, four per cent of the amount thereof. And at the expiration of such ninety days the treasurer shall issue his warrant against the delinquent taxpayers for the amount of all taxes remaining unpaid, which said warrant shall remain in full force until all the taxes thereon are either collected, abated, or have become outlawed. And the treasurer shall deliver such warrant, together with a rate-bill of such delinquent taxes, to the collector of the town, village, school or fire district, who shall proceed forthwith to collect said taxes, and shall at the end of every two months, or previous to such demand by the selectmen, or oftener, if demanded in writing by the selectmen, pay all taxes collected during said two months into the treasury named in his warrant.

The provisions of the above section shall also apply to all tax-warrants hereafter issued by treasurers. S. 482.

Tax Bill, Credit Payment on.— When a collector of taxes makes a payment on account of taxes, he shall state the tax on which the same shall be applied; if he fails to do so, the treasurer to whom the same is paid shall immediately notify the bondsmen of such collector of the fact that no application of the payment has been made, and unless the collector shall direct an application within ten days, the application made by the treasurer shall be conclusive. S. 538.

Town, Execution Against.— The officer who receives any such execution shall forthwith demand the amount thereof of the treasurer of the town; and such treasurer shall pay the same with charges, if there are sufficient moneys in his hands belonging to such town. S. 1809.

The authority issuing a writ of execution may authorize some one specially to serve it against a town, and a demand upon the very person who is treas-

urer though not made upon him as such but as an officer of the town, if made twelve days before the levy of the execution, for payment is sufficient.—*Walter v. Denison*, 24 Vt. 551.

State Highway.— A town treasurer shall, upon receipt of notice of the amount of state highway tax apportioned to his town, transmit the same to the selectmen who shall draw an order on him for the amount of the tax. S. 3435.

The treasurer shall pay the same to the state treasurer, out of any moneys belonging to the town; if the funds in his hands are not sufficient to pay such tax, the selectmen shall borrow the necessary amount on orders. S. 3436.

Weights and Measures, Standard.— Each town treasurer shall provide and keep in repair in his office the following standard measures: one half-bushel, one peck, one half-peck; one gallon, one two-quart, one quart, one pint, one half-pint, wine measure; one yard measure, and such scales or weights as the town directs, which shall be proved and sealed by the county treasurer. S. 4291.

The town treasurer shall prove and seal scales, weights or measures presented to him for that purpose. S. 4292.

TREASURER.

See "Town Treasurer."

Tree Wardens.— Every town may at its annual election of town officers elect a tree warden, who shall serve for one year or until his successor is elected and qualified. He may appoint such number of deputy tree wardens as he may deem expedient, and may at any time remove them from office. He and his deputies shall receive such compensation for their services as the town may determine, and, in default of such determination, as the selectmen may prescribe. He shall have the care and control of all public shade trees in the town, except those in public parks or open places under the jurisdiction of park commissioners. He shall expend all funds appropriated for the setting out and maintenance of such trees. He may prescribe such regulations for the care and preservation of such trees, enforced by suitable fines and forfeitures, not exceeding twenty dollars in any one case, as he may deem just and expedient; and such regulations, when approved by the selectmen and posted in two or more public places in the town, shall have the force and effect of town by-laws. It shall be his duty to enforce all provisions of law for the preservation of trees. Acts of 1904, No. 76.

TRUANT OFFICERS.

See "Selectmen."

TRUSTEES OF PUBLIC FUNDS.

One or more trustees of public moneys are elected annually at the annual town meeting. S. 2980.

Three trustees are chosen to hold and manage all real and personal estate, except United States deposit money, held by towns in trust for any purpose, unless the person giving the same otherwise direct. At the meeting when these trustees are first elected, they are chosen for the following terms: one for one year, one for two years, and one for three years. Their successors are elected for the term of three years, but the person chosen to fill the vacancy serves only for the remainder of the unexpired term. S. 3034.

The powers and duties of the trustees are fixed by statute. They are required to make annual reports to the town at the annual town meetings of the amount of the funds in their hands, the manner and condition of its investment, and the disposal of the income thereof; and if any part of such fund is school money, they make like reports to the state superintendent of education. SS. 3035-3037.

UNORGANIZED TOWNS AND GORES.

The inhabitants, or any of them, of an unorganized town containing twenty families, are subject to a forfeiture of two hundred dollars for each year's neglect to organize it.

An organization is effected upon application of four freeholders to any justice, who thereupon warns a meeting of the freemen of such town in the manner town meetings are warned. The justice presides at such meetings until a moderator is chosen, and the freemen then organize the town. SS. 2978, 2979.

Commissioner.— The governor is required biennially to appoint in counties in which there are unorganized towns, or gores, a commissioner and collector of taxes, who resides near such towns, or gores. The same person may be both commissioner and collector. S. 385.

The assessment and collection of taxes are not unlike in method those functions as performed in towns, the commissioner and collector performing the duties of town officers in that behalf.

Victuallers.— The selectmen may license for one year or a less time suitable persons to keep victualling houses, shops, or cellars, or inns in their towns, and to sell therein fruits and provisions, and may revoke such license when the public good requires.

Licenses granted by the selectmen are signed by a majority of them, and are not effectual until recorded in the office of the clerk of the town.

The duties and liabilities of innkeepers and victuallers are set forth in detail in the statutes. SS. 4719-4730.

VILLAGES.

Incorporation; Powers.— The law provides for the establishment in limited areas within a town, of village corporations, and confers upon the inhabitants of such corporations certain powers of self-government.

These corporations are, however, subordinate to the town in which they are situated, and their inhabitants remain inhabitants of the town the same as though no corporation had been formed. Persons residing within the limits of an incorporated village who are voters in town meeting are voters in village meetings.

These corporations are formed upon petition of a majority of the voters in town meeting residing in a village containing thirty or more houses. The petition is addressed to the selectmen of the town and sets forth the name and the proposed boundaries of the village. The selectmen thereupon cause a description of the village by its name and bounds to be recorded in the town clerk's office and posted in two or more public places in the village; and the residents in such village thereupon become a body politic and corporate with the powers incident to a public corporation, known by the name expressed in such description and by that name they may sue and be sued, and hold and convey real and personal estate for the use of the corporation. SS. 3121-3133.

Other Powers.— Village corporations are also clothed with powers usually granted to municipal corporations, to require buildings to be constructed with fire-escapes, and other facilities for entrance and exit on all occasions, and to be altered, if necessary, so as not to endanger the health and safety of persons who may occupy them. They may also establish and maintain public libraries for the use of their inhabitants; lay out streets and lanes within their limits, and appoint police officers, such powers to be exercised by their bailiffs or trustees. SS. 3133-3139.

Organization; Meetings.— The voters in such a village are required to meet for the purpose of organization within sixty days after the record of its name and bounds has been made. Notice of the time and place and hour of the meeting, signed by the town clerk, or a selectman, is posted in four public places in the village, and published in each newspaper printed therein, at least ten days previous to the meeting. The corporation is organized at the meeting by the election of a clerk, five trustees, or bailiffs, a treasurer, and a collector of taxes, who hold their offices until the first annual meeting, and until others are chosen. S. 3124.

A meeting of the corporation is held annually at the time and place designated by its by-laws, to elect officers and transact the business specified in the warning of the meeting; and special meetings may be called by the trustees. S. 3125.

Officers, Duties.— The clerk, treasurer and collector are required to be sworn, and the treasurer and collector give bonds with sureties to the corporation, in such sum as the trustees direct, for the faithful performance of their duties. The clerk keeps records of the proceedings of the corporation. The trustees are charged with the duty of seeing

that the by-laws are executed and perform such other duties as are enjoined on them by the corporation. Their duties and powers are in general like those of selectmen of towns.

Taxes.—Such corporations may vote taxes upon the polls and taxable estate therein for the lawful purposes of the corporation. The trustees make out and deliver to the collector a tax-bill with a warrant for its collection, and the collector has the same powers to collect tax-bills as collectors of town taxes. SS. 3127-3130.

By-laws.—A village may enact such by-laws and regulations as are expedient, not inconsistent with law; particularly such as relate to streets, sidewalks, lanes and commons, and shade and ornamental trees thereon; to slaughter houses and nuisances; to a watch, and lighting the streets of said village; to restraining animals from running at large; to the erecting and regulation of buildings and hay scales; to the preservation of buildings, with the right of directing alterations in stoves, fireplaces, and causes from which danger from fire may be apprehended; to fire engines and other apparatus necessary for the extinguishment of fire, and for establishing and regulating fire companies; and to the manufacture and safe-keeping of ashes, gunpowder and combustibles. S. 3131.

A statute empowering the authorities of a city to construct sidewalks and make local assessments on the property fronting the same "for so much of the expense thereof as they shall deem just and equitable," is unconstitutional. *Barnes v. Dyer*, 56 Vt. 469.

In a case where tiles belonging to a village corporation were so piled against a fence that the boards were forced off and fell with the tiles upon a person occupying the lot upon which they fell, it was *held* that the corporation was liable for the negligence of its servants.—*Palmer v. St. Albans*, 56 Vt. 519.

An incorporated village was not liable for damage caused by surface water discharged from one of its street culverts into a ditch on plaintiff's premises, when it appears that the natural flow of the water was on his land; that the culvert was necessary, and that the ditch and culvert had existed for more than twenty-three years.—*Noble v. St. Albans*, 56 Vt. 522.

Where an incorporated village was authorized by its charter to construct sewers, and the defendant, without taking any of the steps provided by the charter to get the village to build a sewer, procured tiles and an employee of the village, and on his own motion built a sewer across his land, it was *held* that the defendant was liable for the value of the tiles and labor.—*St. Albans v. Noble*, 56 Vt. 525.

Where a village charter authorizes it to suppress and restrain all descriptions of gaming, it repeals by implication an earlier statute empowering the selectmen to permit or forbid the use of billiard-tables. A grant of the power to restrain gaming confers the right to license billiard-playing.—*In re Snell*, 58 Vt. 207.

The charter of an incorporated village authorizing it to "regulate its victualling houses," repeals by implication the general law authorizing the selectmen of a town to license persons to keep such houses, and confers upon the village power to license. The by-laws of a municipal corporation authorized by its charter have the same effect within its limits as a special law of the legislature.—*St. Johnsbury v. Thompson*, 59 Vt. 300.

The charter and by-laws of a village, authorizing the abatement of a nuisance, requiring the trustees first to give notice and an order to the owner

to remove, it cannot justify their acts in removing a fence under such notice when the court below found that it was not the fence, nor the lot, but the use of the lot sheltered by the fence that created the nuisance. A notice of the identical nuisance is a condition precedent for the exercise of such power by the trustees.—*Verder v. Ellsworth*, 59 Vt. 354.

When the legislature delegates to an incorporated village power without limitation to supply itself with water, such power rests in the discretion of the voters of the village in respect to the amount of money to be expended on aqueducts, and the supplying of water, if exercised in good faith and for a proper municipal purpose. An injunction was refused restraining the expenditure of the money voted for constructing a water main.—*Lucia v. Eaton*, 60 Vt. 537.

Where the trustees of a village are authorized to repair and maintain its streets, and in so doing they construct ditches along the highway, and a tile drain extending into the premises of an abutting landowner, through which the surface water is collected and discharged upon such premises, the municipality is liable for damages if it allows the drain to continue in that condition after notice. The knowledge of its trustees will be its knowledge.—*Whipple v. Fairhaven*, 63 Vt. 221.

Under its charter a village corporation may levy whatever tax is needed to make compensation for injuries sustained upon the highways within its limits.—*Crockett v. Barre*, 66 Vt. 269.

The bailiffs of a village acting under a by-law may, after having determined that the discharge of a private drain into an open sewer is a nuisance, order the drain disconnected, and in case of failure to comply with the order, may disconnect it themselves.—*Camp v. Barre*, 66 Vt. 563.

The trustees of a corporation destroyed a mill-dam during a freshet to prevent the river from washing out the highway. Held, that the corporation was not liable, there being a public necessity for the destruction. The plaintiff's loss is a damage without legal injury. A very full examination of the cases by the court.—*Aitken v. Village of Wells River*, 70 Vt. 308.

In a case where the charter of a village authorizes its trustees, upon application in writing of the voters, to make and maintain common sewers, "when the public health or convenience" requires their construction, held, that the trustees had no jurisdiction unless they found that the public health or convenience required the construction, and that this jurisdictional fact must appear of record, and could not be inferred from their having granted the prayer of the petition.—*Kent v. Enisburg Falls*, 71 Vt. 255.

VOTERS.

Qualifications.—Citizens of the United States, and persons who have become citizens of this state by virtue of the constitution or laws, are, while residing in the state, citizens thereof.

Every male citizen, twenty-one years of age, or more, having resided in the state one year next preceding a general election, shall have a right to vote at such election, for the officers to be elected thereat, in the town where he resides on the day of the election. But he shall not vote for town representative or justices at such election unless he has resided, during the three months next preceding the election, in the town which is his residence on the day of election. SS. 60, 61.

In Town Meetings; Delinquent Tax-Payers.—Male citizens, twenty-one years of age, whose lists are taken in any town at the annual assessment next preceding a town meeting, or who are exempt from taxation for any cause, shall, while residing in the town, be voters in town meetings.

A voter in a city, town or incorporated village meeting who is a delinquent tax-payer in such municipality shall not be allowed to vote in annual city, town, or incorporated village meetings until he has paid said tax or taxes and presents a receipt for the payment of the same, signed by the proper officer, to the board of civil authority in said city, town or incorporated village. S. 2971.

WOOD SURVEYOR.

One or more surveyors of wood are chosen annually at the annual town meeting. S. 2980.

RHODE ISLAND

RHODE ISLAND.

INTRODUCTORY.

Although the smallest in area and population of the states of New England, Rhode Island offers perhaps more and more interesting matter for the student of municipal government than any other in the group. Its early history abounds in materials for the investigator of the beginnings of our political institutions. The early assertion of individual liberty of conscience and conduct, which made the colony founded by Roger Williams an asylum for the victims of Puritan intolerance, has furnished the key-note of its subsequent history. Individualism has ever been a distinctive characteristic of its people.

The first four towns were pure democracies, and in their first formal compacts of association distinctly declared their independence of both foreign and ecclesiastical rule. The Roger Williams patent of 1644 provided that the inhabitants should have full power and authority to rule themselves "by such a form of civil government as by voluntary consent of all, or the greater part of them, they shall find most suitable to their estate and condition."

As in the other colonies, ordered government began with the *town court*, a popular assembly which met fortnightly, included all qualified electors of the town, and took cognizance of all matters civil and criminal which concerned the inhabitants, so in Rhode Island the first settlers began the business of government with the town meeting, which undertook in a clumsy and inefficient way to manage all their affairs. This method proving both costly and burdensome, the people soon adopted the device of a smaller body chosen out of their own number, to which they delegated the powers of government which they had themselves previously exercised. Out of that primitive body by a process of evolution has come the town council of to-day.

The other colonies resorted to a similar expedient to relieve the people of the oppressive burden of the town court, and chose "townsmen," or "selectmen," to whom they gave authority to order all the civil affairs of the town for the year following and to divide the lands.

This practice was confirmed in Massachusetts when in 1641 by the adoption of the "Body of Liberties," the freemen of every town or township were given "full power to choose yearly or for a less time out of themselves a convenient number of fit men to order the planting or prudential occasions of that town according to instructions given to them in writing; *Provided*, nothing be done by them contrary to the public laws and orders of the country, and also the number of such select persons be not above nine."

The selectmen of our day, as they perform the duties devolved upon them by the laws of the different states, fulfil more or less completely the purposes of those earlier officers to whom was committed the trust of administering the affairs of the primitive communities. In the main, they have preserved their original functions, although shorn of some which are now performed by other officers. In some directions their powers have been increased, to meet the increased demands and complexities of these latter days.

A comparison of the powers and duties of the selectmen in the other states with those of town councils in Rhode Island shows not so much variance in the number and nature of their attributions, although there are important differences there, as in the greater discretion and initiative possessed by the governing body under the Rhode Island system.

The selectmen exercise the same supervision of town affairs as do the town councils, have the like power of appointment and removal of town officers and to fill vacancies, and in certain cases they assume and discharge the duties of officers not elected by the town, but they are in a less real and effective sense the governing body, the *imperium in imperio*, of the town.

The councils are clothed with legislative powers not granted to the selectmen of other states, in which the towns themselves make the by-laws which regulate their internal affairs within limits prescribed by the statutes. That prerogative in Rhode Island is exercised by the town councils.

In opening public highways, the town councils not only have the initiative but the final disposition of the matter, whereas in the other states, with the possible exception of Vermont, the final determination, if not the initial steps, rests with the voters of the town. Other and important differences of functions as well as of methods of administration between the Rhode Island system and those of the other states exist, and will be shown as those systems are severally treated in other parts of this volume.

One entirely unique feature in the work of the town council is its jurisdiction as a court of probate. Except when a town elects a judge of probate, the town council is the probate court, and as such is invested with all the powers and duties usually possessed by such tribunals.

Other town officers of Rhode Island towns, in their respective duties and powers, correspond very closely to those of like names and functions in the towns of other states, with the exception of the town clerk, whose duties, in connection with those of the town council especially, present some marked differences from those of clerks in towns of other New England states. He not only acts as clerk of the council, and in that capacity performs a very important part of its functions as a board of canvassers of voters and probate court, but also in the discharge of his special duties as registrar of voters and recorder of deeds. He also calls all town meetings.

In view of the exceptional character of the town council and town clerk, it has seemed to the author that a somewhat detailed summary of their more important duties and powers might prove acceptable to the reader, although in subsequent pages will be found the statutes and judicial decisions in which those powers and duties are expressed and defined.

TOWN COUNCIL.

The town council consists of not less than three nor more than seven members, the number being determined before their election at the annual town meeting at which they are chosen. They may be elected by ballot, or otherwise; if by ballot, the names are numbered upon the ballots, and in counting them the places numbered are considered as separate places. They are elected to serve until the next annual election and until their successors are qualified.

A majority of the members elected constitute a quorum, and a majority of the members present at any legal meeting may determine any matter legally before them. In towns where councils have probate jurisdiction, they are required to hold regular meetings for the transaction of council and probate business as often as once in each month, at such time and place as they may fix by general order.

The town clerk is clerk of the council, but when it satisfactorily appears to the council that the clerk is disqualified for the performance of his duties, they may appoint a clerk *pro tempore*, who, when duly qualified, is authorized to perform all the duties of that office until the disability of the town clerk is removed or another has been legally elected by the town.

Their general authority is expressed in the statute as follows:

“The town council of each town shall have full power to manage the affairs and interests of such town, and to determine all such matters and things as shall by law come within their jurisdiction.”

Under the authority conferred by this section and other provisions of the statutes, they may make all ordinances, by-laws, and regulations necessary “for the well-ordering, managing and directing of the prudential affairs and police of their respective towns, not repugnant to the constitution and laws of the state or of the United States.”

Within the scope of this authority come ordinances for the prevention and punishment of indecent intoxication; for the care of public parks and grounds; for the construction of entrances and exits to buildings, halls, and rooms used for public amusements; to regulate elevators and hoistways and the use of explosives for blasting purposes; and to prescribe the times of closing shops, saloons, and other places of resort in the evening.

They may appoint all necessary officers for the execution of such ordinances, by-laws, and regulations, and may impose penalties for

the violation of the same not exceeding twenty dollars in amount, or imprisonment for more than ten days for any one offense, unless another penalty is especially prescribed by statute.

They have power to hold land in trust for burial purposes and funds conveyed to them for the care and ornamentation of burial lots, and may take possession of ancient burial grounds and hold in trust all funds given them to keep such grounds in repair or for the ornamentation or improvement of the same, when unopposed by persons interested therein.

They may make rules and regulations, subject to the approval of the railroad commissioners, with reference to the rate of speed and mode of operation of railroads in the streets and highways; and the character of the paving, repaving, and repairing of streets and road-beds required by law of such railroads is fixed by them.

They are *ex officio* boards of health, and may make rules and regulations for the preservation of the public health, the prevention and abatement of nuisances, the prevention of contagious or infectious diseases, and the exclusion from their towns of cattle and other animals infected with disease, and may affix penalties for the violation of such rules and regulations.

Unless otherwise provided, the town councils are the probate courts of their respective towns, but any town may elect a judge of probate, who, when qualified, has the powers, and is subject to the duties, of a probate court, in the place and stead of the town council. Whenever the judge of probate of any town is a party or interested in any case arising in his town, or is absent or unable to perform his duties, the town council performs such duties in the same manner as if no judge of probate had been elected.

The duty of drawing jurors devolves upon the town council. The names are drawn by lot and recorded by the town clerk; and a list of all persons deemed eligible for jury duty is made by the council and kept on file in the office of the town clerk. The numbers of grand and petit jurors and the times for drawing them in the different counties and towns are prescribed by statute.

Upon the request of the commander-in-chief, they are required to make a list of all persons in their town subject to military duty, and upon the like request for a draft or levy from the enrolled militia, they are required to make such draft, or accept volunteers for as many men as may be called for by the commander-in-chief. They are also required to provide armories for companies of militia within the limits of the town.

Work upon the town ways is done under the direction of the town council, who divide the town into districts, not more than four, and annually elect one surveyor for each district. They have charge of the expenditure of appropriations made by the town for highways and bridges, and in case the town fails to make such appropriations, the council may make such expenditure upon them as may be necessary to make them safe and convenient for travelers. The surveyors of highways execute the directions of the council, who may suspend or remove any surveyor for incapacity or for any tyrannical or unwarrantable exercise by him of the powers of his office, and appoint another in his place.

They may order highways to be laid out through such part of their towns as they may judge necessary, and for the purpose of marking out such a way, may appoint three "suitable and indifferent men, not interested or concerned in the land through which it is to pass," who survey, bound, and mark out the proposed way conformably to the directions of the council. In case these commissioners fail to agree with the owners of the land over which the way is laid out as to the damage, the council value and appraise the damage, if any, caused by the passing of the highway through the land.

A plat of the highway and a report of their doings, in writing, is made by the commissioners and delivered to the council, who thereupon notify all persons interested in the land through which the highway is laid to appear before them and be heard for or against the report. Upon such hearing the council receives or rejects the report, as to them shall appear just and right; if the report is approved by the council, they cause it to be recorded and the highway to be established and laid open.

The town council may lay out driftways as fully and in like manner as they lay out highways.

They may declare to be public highways all lands which have been quietly, peaceably, and actually used and improved, and considered as public highways for the space of twenty years. They may mark out, relay, widen, and straighten, change or abandon the whole or any part of any highway or driftway except those along the Woonasquatucket river. They have like control of any highway or driftway laid out by the General Assembly. They may order highways or parts of highways to be graded within their towns, and if any grade is established, the same cannot be changed except with the consent of the council of the town in which it is located.

They are boards of canvassers of voters in their towns, and as such

charged with the duty of preparing and correcting lists of the voters. These lists are printed and posted up by the town clerk in public places. When the lists have received final correction, they are certified by the presiding officer of the board and delivered to the town clerk, who in turn delivers them to the moderator of the town meeting at which they are to be used.

In preparing and correcting such lists, they may examine persons whose right to vote is disputed, and may receive any other evidence offered, by them deemed necessary to determine whether any person has the right to be registered or to vote.

They are authorized to license public performances, shows, exhibitions, dances, or balls, under such regulations and restrictions as they may prescribe; but no such license shall be given for the first day of the week.

They may license persons to keep bowling-alleys, billiard-tables, and shooting-galleries for public use, and assess, levy, and collect the taxes imposed for the same.

They have authority to license pawnbrokers and private detectives and fix the fees to be paid for such licenses.

They may grant licenses for the manufacture or sale of pure, spirituous, or intoxicating liquors in their towns; or they may in any year elect three commissioners, who shall have and exercise all the powers vested in the town council to grant such licenses. No member of the town council is eligible for election as such commissioner.

They have power, by granting licenses therefor, to regulate the keeping of taverns, victualling-houses, cook-shops and oyster-houses, upon such compensation as they see fit to impose.

They may determine to what towns paupers not legally settled in the town shall be removed, and cause insane paupers to be removed to the State Asylum for the Insane.

They may make such ordinances concerning dogs as they deem expedient, and impose such yearly tax upon every person in their town for every dog owned or kept by him as they shall judge proper.

They may elect one or more special constables, to serve not more than one year, charged with the special duty of preserving order in and about public meetings, steamboat-landings, and railroad stations, and may choose such number of police constables as they deem expedient, with limited powers, to serve during the pleasure of the council, but not over ten days beyond the term for which the council were elected. They may also appoint railroad and steamboat police upon application of a railroad or the owners of a steamboat.

They are required to make all needful provision for habitual truants and children who are idle, not going to school, and growing up in ignorance, and designate or provide suitable places for the confinement, discipline, and instruction of such children.

They may appoint field-drivers, inspectors of hides and leather, milk, and petroleum; deputy sealers of weights and measures; officers of quarantine; special auctioneers and undertakers, and may elect cotton weighers and fire marshals. They are required to designate annually a proper person who shall cause to be interred the body of any honorably-discharged soldier, sailor, or marine who has been in the United States service in any period of war, and who may not have left sufficient means to pay his funeral expenses.

It is their duty to elect a board of trustees for a free public library when established in the town, and to fill vacancies occurring in such board.

They are required annually to appoint weighers of cattle, weighers of coal and other merchandise, and surveyors of lumber in towns where lumber is imported for sale.

They elect annually an inspector of buildings, and fix the compensation of such inspector, and choose a coroner who holds his office for three years, unless sooner removed by the election of another person to fill his place.

In case of a vacancy in the office of any officer whom a town or a town council is authorized to elect, the council may elect a suitable person to fill such vacancy.

TOWN CLERK.

In Rhode Island, town meetings are called by the town clerk, who issues his warrant addressed to the town sergeant or one of the constables of the town, directing him to post, at least seven days before the day appointed for such meeting, written notifications in three or more public places in the town, of the time when and the place where the meeting is to be holden, and of the business required by law to be transacted therein.

Special town meetings are called by him in like manner whenever the town council, or seven of the electors of any town consisting of less than three thousand inhabitants, or five per cent of the electors of any town consisting of more than that number, make a request in writing directed to him for the calling of such meeting.

The clerk immediately upon issuing notices for any called town or district meeting, or for any special election, notifies the board of canvassers thereof.

Voting-lists are printed and posted up by him in at least three public places in towns not divided into voting-districts; and in towns so divided, separate lists for the district are posted up in at least three public places in each voting-district.

All voters with the exceptions noted below are required to register themselves every year in a book specially prepared and furnished for the purpose by the Secretary of State. This book, entitled the **REGISTRY BOOK**, is sent by the Secretary to the town clerk of every town, and is kept by him in his office for the use of voters.

Every person who is, or within a year may be, qualified to vote upon being registered, may, on or before the last day of December, annually register his name and thereby certify the truth of the facts stated in the appropriate heads of the registry.

The clerk is required to be in his office for the three secular days next preceding and including the last secular day of December in each year, and remain there during certain hours of those days, for the purpose of registering voters; and to attend to such registration at such other times as persons may apply to be registered. He is also required to place annually upon the voting-list, the names of persons who have previously been upon the list, according to law, against whom a property tax to the amount of one dollar or upwards has been assessed; and such persons need not register their names annually as is required of persons not paying a property tax.

He acts as clerk of the board of canvassers of voters, and is required to produce before it such returns, documents, and records as may be necessary for the performance of its duties.

The board of canvassers meets on Tuesday next after the first Monday in September in every year, at which time the voting-list for the town is made up. The town clerk records the votes of members of the board upon admitting or rejecting the name of any person from the list of voters, whenever requested thereto by any member of the board, or by any qualified elector of the town present at the time of canvassing.

The board of canvassers at their several meetings correct the lists and add to them the names of all persons qualified to vote whose names are not on the list. At the final meeting of the board held not more than seven and not less than three days preceding the day of voting at any election, they complete the list of persons qualified to vote. The list of voters so corrected is certified by the presiding officer of the board, and on the same day is delivered to the town clerk, to be by him delivered in turn to the moderator of the town meeting.

In every town divided into voting-districts, the clerk sends to the moderator of each district a certified copy of the list for his district before the time fixed for opening the meeting for any election.

At the first meeting of any voting-district for an election, the town clerk is required to cause notice of the time, place, and purpose of the meeting to be given by issuing his warrant to the town sergeant or one of the constables of the town, directing him to post up notifications thereof in two or more public places in the district.

All ballots used in the choice of town and voting-district officers and members of school committees in towns which have adopted the Secret Ballot Law of 1891, are printed and distributed at the expense of the towns. The duty of providing ballots for use in town elections devolves upon the town clerk. All ballots furnished by the state are provided by the secretary of state.

At every election ballots are provided for each voting-place, not less than sixty for every fifty and every fraction of fifty qualified voters, and in cases where they are to be furnished by the state, it is the duty of the town clerk to certify to the secretary of state, fourteen days previous to an election, the number of voters qualified to vote at each voting-place in his town.

The form of ballot is much the same as is used in other states where the Australian system of voting prevails. One detail is pecu-

liar. For the guidance of illiterate voters, emblems are printed above the columns of candidates of each political party — an eagle for the Republican and a star for the Democratic candidates. Emblems or devices for other political parties may be chosen by the Secretary of State; but neither the coat of arms or seal of any state or of the United States, the national flag, any religious emblem or symbol, the seal of any society, the portrait of any person or the representation of a coin or of the (paper) currency of the United States shall be chosen as a distinguishing emblem.

The ballots when printed and folded are put up in packages of one hundred each, and a record of the number furnished to each polling-place is kept and preserved by the town clerk. He sends to the moderator of each voting-place before the opening of the polls on the day of election the ballots prepared, sealed, and marked for such voting-place by the secretary of state, or by himself, and a receipt for the same is returned to him from the moderator, which receipt with a record of the number of ballots sent is kept in the clerk's office.

With the ballots sent to the voting places, the town clerk is also required to furnish "Instruction Sheets" whereon are printed full instructions for the guidance of voters, and, in like manner, other sheets containing the statutes fixing penalties for violating the law pertaining to elections. He is also required to furnish "Specimen Ballots," printed without the facsimile endorsements, but otherwise in like form as the official ballots.

In case of an election of town or voting-district officers, the clerk, four days before such election, prepares printed lists of all candidates to be voted for substantially in the form of the ballot to be used in the election, and causes such lists to be conspicuously posted in not less than five public places in the town or voting-district. He also causes to be posted in like manner the printed lists of candidates at other elections, transmitted to him by the secretary of state.

Every voter at an election is required to announce his name to the moderator, who pronounces it aloud, and causes it to be checked by the town clerk on the voting-list before the voter deposits his ballot in the ballot-box or voting-machine.

In every town not divided into voting-districts, the packages containing the ballots given in at any meetings for the election of senators and representatives in the General Assembly or town officers, including meetings where there was no choice for senators and representatives, after such ballots have been counted, recorded, sealed, and endorsed as provided by law, are delivered in person by the town

clerk of the town to the state returning board within forty-eight hours after such sealing is done.

The clerk of each town is required to furnish a sufficient number of ballot-boxes for the voting-places in his town, see that such boxes are kept in proper condition for use, and that each voting-place is supplied with the required number of such boxes on the day of every town or district meeting.

Nomination papers, before being filed, are submitted to the clerk of the town in which the signers purport to be qualified voters; and the clerk to whom they are submitted certifies thereon what number of the signatures are names of qualified voters in the town.

The town clerk is the recorder of deeds, and whenever any instrument entitled to record is presented for record he is required to cause to be entered in writing thereon the day, hour, and minute when the same was presented, and forthwith enters the same in the order of presentment in a receiving-book kept for that purpose.

Unless otherwise provided by law, the town council of each town is the probate court within the town, and the town clerk is the clerk of that court. It is the duty of the clerk to attend all meetings of the court and to record its proceedings and all wills, administrations, inventories, accounts, decrees, orders, determinations, and other writings, which are made, granted, or decreed upon by the court; and he has the custody and safe-keeping of the seal of the court and of all books and papers belonging to the probate office.

He is required to keep a docket of all cases and matters in the court, and to enter upon it every case or matter by its appropriate title with short memoranda of proceedings had and papers filed therein; also an index of all such cases and matters; and the docket and index are required to be open at all reasonable times to public inspection. He is empowered to administer oaths, and in general performs all the duties usually performed by clerks of probate in other jurisdictions.

The town council, in the month of April in every year, makes a list of persons in the town qualified to serve as jurors, which list is kept on file in his office by the town clerk.

The clerk of the common pleas division of the supreme court in each county transmits before the first day of June in each year, to the town clerk of each town in the county, lists of the names of all persons from the town who have served on any grand or petit jury impanelled in the county during the year next preceding; also the names of all persons who have been excused by the court from

serving as jurors for the current year, and, if it be the case, the opinion of the court that certain of such persons should be permanently excused from serving as jurors.

The clerk of each town between the first and fifteenth days of June in each year erases from the list of jurors made by the town council in April of that year the names of all persons returned by the clerk of the common pleas as having served as jurors within the year next preceding, and the names of such persons as in the opinion of the court should be permanently excused from serving as jurors.

The town council in each town is required to meet in each year between the fifteenth day of June and the third Monday in July, and thereafter as often as may be necessary before the following fifteenth day of June, for the drawing of grand and petit jurors. At such first meeting, the names of all persons remaining on the lists, written upon pieces of paper, are placed in a box provided for the purpose, and drawn therefrom by lot, by the presiding officer of the council. The number of jurors to be drawn from the several towns is prescribed by law.

The names drawn at any meeting for drawing jurors are entered in a book kept by the clerk for that purpose, in the presence of the town council, who attest the correctness of the list as entered with their signatures; and the town clerk is required at once to send a list of such names to the clerk of the common pleas division of the county.

Additional jurors are drawn by the town council, which meets upon notice from the town clerk given pursuant to an order of a justice of the common pleas division. The names of the jurors drawn at such meetings are entered in a book kept by the clerk for that purpose, attested by the council, and sent to the clerk of the court.

Upon notice from the common pleas division of the county that a certain number of grand or petit jurors are required, at a time and place specified, it is the duty of the clerk to select from the jury-lists, in the order in which they appear thereon, so many names as may be required, and to issue notifications to the town sergeant or any constable of the town where such jurors reside, under the hand of the clerk and the seal of the town council, designating therein who are grand jurors and who are petit jurors, and the time and place at which such jurors are required to attend.

It is the duty of the clerk, unless the town council has appointed

some other person for the purpose, to obtain all information concerning births, deaths, and marriages, required by forms prescribed by law, occurring among the inhabitants of the town, to record and index the same chronologically, and, annually, to make returns thereof to the secretary of the state board of health for the calendar year next preceding, accompanying the same with a list of the persons required by law to make returns to him who have neglected to do so, and with such remarks relating to the matter as he may deem important to communicate.

The clerk is also required in obtaining facts to be gathered by him concerning births, to collect as far as practicable the names of all persons liable to be enrolled in the militia, and the census of all persons between the ages of five and fifteen years inclusive, the necessary blanks therefor to be furnished on application, by the state board of health, the adjutant-general, or the commissioner of public schools, as the case may be.

He is further required on the first day of every month to make a certified copy of the entries of all births, marriages, and deaths recorded in the books of the town during the previous month, whenever the parents of the child born, or the bride, or the groom, or the deceased person, were resident in any other town or city in the state, or in any other state, at the time of such birth, marriage, or death, and to transmit such certified copies to the clerk or registrar of the town, city, or state in which the parents of the child born, the bride, or the groom, or the deceased person, were resident at the time of said birth, marriage, or death, giving all particulars obtainable by him in regard to the same. He is the custodian of all records of births, marriages, and deaths.

Every person desiring to marry in Rhode Island is required to furnish to the clerk of the town in which he resides, or, if a non-resident, to the town or city clerk of the town or city where such marriage is to be solemnized, the information called for in the form of declaration of intention of marriage prescribed by statute, and subscribe to the truth of the same.

The clerk makes a record of the declaration of intention, and issues a certified copy, constituting a marriage license, upon payment of his fees.

The person who performs the marriage ceremony is required to return the license with his certificate endorsed upon it to the fact of marriage, to the town clerk who issued it. The clerk files and records the license with the endorsement upon it in a separate book,

and forwards the original declaration of intention to the secretary of state.

Manufacturing corporations are required to file in the office of the clerk of the town where their manufactory is situated, when their capital stock is fully paid, a certificate of the fact duly signed and sworn to by their officers, and a like certificate in case of an increase of their capital stock. They are also required to file in the same office a certificate of their financial condition on or before the fifteenth day of February in each year.

The town clerk is required to insert in his warrant for a meeting for the election of general officers the question of granting licenses in the town for the sale of intoxicating liquors, upon the written request of fifteen per cent of the qualified voters of the town as shown by the aggregate vote cast for general officers at the election next preceding, the request being presented to him at least twenty days prior to such election; and in such case he is also required, at least fifteen days prior to such election, to file with the secretary of state a certificate that the question is to be submitted to the vote of the people of the town.

Licenses for dogs are issued by him to the owner or keeper upon payment of the fees prescribed by law. The clerk enters a description of the dog in a book kept for the purpose, and pays the money received for license into the town treasury, less the fees allowed him for his services.

He is required annually in March to post up notices, in five or more public places, of the time and place of issuing such licenses.

It is unlawful for any person to practice medicine or surgery in any of its branches, in Rhode Island, who has not exhibited and registered in the city or town clerk's office of the city or town in which he or she resides, his or her authority for so practicing medicine, together with his or her age, address, place of birth, and the school or system of medicine to which he or she proposes to belong; and the person so registering is required to subscribe and verify by oath before the clerk an affidavit containing such facts.

The clerk is required to purchase and keep a book entitled the MEDICAL REGISTER, and to set apart one full page for the registration of each physician in the town; and when any physician dies or removes from the town, it is the duty of the clerk to make a note of the fact at the bottom of the page on which such physician is registered. He is also required to transmit, on the first day of January in each year, a duly certified list of the registered physicians of the town, to the state board of health.

STATUTES.

[REFERENCES NOT OTHERWISE DESIGNATED ARE TO GENERAL LAWS OF RHODE ISLAND, 1896, AS AMENDED.]

ASSESSORS OF TAXES.

Election; Vacancies; Oaths Administered.—The electors in each town annually on town election days choose such a number of assessors of taxes, not less than three nor more than seven, as may be deemed necessary.

In case of failure by the town to elect the assessors, they are elected by the town council of the town at their next meeting, but the town council may postpone their election to some future meeting.

Vacancies in the office may be filled by the town council until the next town meeting for election. C. 39, SS. 1, 13, 20.

They may administer oaths as to all matters connected with the exercise of their office. C. 25, S. 11.

Where the taxpayers of a city had determined the amount to be expended for a city hall and its site, the city council could not exceed that amount.—*Ecroyd v. Coggeshall*, 21 R. I. 1.

As an assessment-roll failed to show that the assessment for personal property against a business corporation, whose capital is divided into shares, was limited to the kinds of personal property mentioned in c. 45, § 11, G. L., the assessment was void.—*Newport Reading Room, etc., Petitioners*, 21 R. I. 441.

Form of warrant suggested by the court. *The Collection of the Poll Tax*, 21 R. I. 582.

A wife cannot acquire a domicile distinct from that of her husband while the unity of the marriage relation continues, so as to affect the liability of her personal estate to taxation at the place of his domicile.—*Howland v. Granger*, 22 R. I. 1.

Pub. Laws, chap. 386, 387, ratifying the action of a town and town council in exempting from taxation for a term of years the property of a corporation to be thereafter located in the town, upheld as constitutional.—*Crafts v. Ray*, 22 R. I. 179.

An action does not lie against a collector to recover taxes alleged to have been illegally assessed and paid under compulsion.—*Fish v. Higbee*, 22 R. I. 223.

A person who had an oral agreement merely for the purchase of land could not be regarded as an equitable owner for the purpose of taxation of the land.—*Fish v. Coggeshall*, 22 R. I. 318.

A description of real estate in an assessment list, not definite enough to identify the land, made the assessment void. Parol evidence cannot be used to supplement an assessment description too indefinite to identify the land assessed.—*Kettelle v. Warwick, etc., Water Co.*, 23 R. I. 114.

The provision of Gen. Laws, c. 46, § 6, that before assessing a tax, the assessors shall post up printed notices of the time and place of their meeting, is mandatory; hence, in an action by a collector to recover a tax against personal property, the burden is on the plaintiff to show compliance with the statute.—*Taft v. Ballou*, 23 R. I. 213.

The land and a building thereon used in part for a chapel for religious

worship and in part for the residence of sisters of mercy, who serve as teachers in a free parochial school in the schoolhouse on an adjoining lot, is not exempt from taxation under G. L., c. 44, § 2.—*City of Pawtucket, for Opinion*, 24 R. I. 86.

A tax assessed in excess of one per cent. of its ratable value in any one year, except for the purpose of paying its indebtedness, is separable, and invalid only as to the excess.—*Warwick & Coventry Water Co. v. Carr*, 24 R. I. 226.

It is only requisite that the work of making an assessment be done within the time limited by the vote of the town, and it will be regarded as taking effect on the last day of the assessment.—*Kettelle v. Warwick, etc., Water Co.*, 24 R. I. 485.

The assessment and payment of a tax by way of license for its corporate franchise by a foreign corporation, doing business in this state, paid in the State where it is located, is not a bar to the assessment and collection of a tax on the market value of its shares in this State, and such stock is not exempt from taxation under chap. 45, § 10, Gen. L.—*R. I. Hospital Trust Co. v. Tax Assessors*, 25 R. I. 355.

The action of the board of assessors in assessing a tax without a vote of the town, in a case where by special act a town was authorized to assess a tax upon a corporation on certain terms named in the act, was void.—*Franklin v. Warwick, etc., Water Co.*, 25 R. I. 384.

The president of a corporation is the proper instrument to make a return to the assessors of the taxable property of the company, where by its by-laws he is given general direction of its business.—*Safe Deposit and Trust Co. v. Assessors of Taxes*, 25 R. I. 524.

Accounts of Tax-payers Verified.—Every person bringing in any such account shall make oath before some one of the assessors that the account contains to the best of his knowledge and belief a true and full account and valuation of all his ratable estate; and whoever neglects or refuses to bring in such account, if over-taxed, shall have no remedy therefor. C. 46, S. 7.

Assessment Filed with Town Clerk.—The assessors, on completing the assessment, shall date and sign the same and deposit it in the office of the town clerk. C. 46, S. 20.

Assess Taxes Legally Ordered.—Assessors and boards of assessors in the several towns shall assess all taxes legally ordered under such rules and regulations not repugnant to law, as the towns from time to time prescribe. C. 46, S. 2.

An attorney at law was employed by a corporation to represent it before the assessors of taxes. He presented a list of the ratable estate and made oath to it before one of the assessors. The corporation by vote sought to ratify the act of the attorney. The attorney was not authorized to make oath to the list, the vote did not ratify his act, and the list, not being duly sworn to, was not a basis for the relief asked for.—*Narragansett Pier Co. v. Assessors*, 16 R. I. 452.

Bank Stockholders, List of.—The cashier of every bank or national banking association shall furnish to the assessors of the town where such bank or banking association is located, upon their written request therefor, within twenty days after the demand by the assessors of the town in which such bank is located, a list of all stockholders in such bank or national banking association not residing within the state together with the amount of stock in such bank or banking association, held by such stockholders respectively. C. 46, S. 5.

Bank Stockholders, Non-resident.—The assessors of the several towns, whenever they shall assess a tax on the stockholders of any bank who are non-residents of the state, shall immediately notify said bank of such assessments, with the amount assessed to each of its stockholders. C. 46, S. 9.

Compensation, Penalties for Neglect.—Assessors shall receive such compensation as the town shall allow.

Every officer who shall neglect or refuse to perform any duty imposed on him in this title (concerning taxes), or who shall not comply with the provisions thereof, or who shall in any wise knowingly violate any provisions thereof, shall be imprisoned not exceeding one year or be fined not exceeding five hundred dollars. C. 50, SS. 1, 4.

Exemptions.—The following property and no other shall be exempt from taxation: Property belonging to the state; lands ceded or belonging to the United States; buildings for free public schools; buildings for religious worship and the land upon which they stand and immediately surrounding the same, to an extent not exceeding one acre, so far as said buildings and land are occupied and used exclusively for religious or educational purposes; the buildings and personal estate owned by any corporation used for a school, academy or seminary of learning, and of any incorporated public charitable institution, and the land upon which said buildings stand and immediately surrounding the same to an extent not exceeding one acre, so far as the same is used exclusively for educational purposes, but no property or estate whatever shall hereafter be exempt from taxation in any case where any part of the income or profits thereof or of the business carried on thereon is divided among its owners or stockholders; the estates, persons, and families of the president and professors for the time being of Brown University for not more than ten thousand dollars for each such officer, his estate, person, and family included; property especially exempt by charter unless such exemption shall have been waived in whole or in part; lots of land used exclusively for burial grounds; the property, real and personal, held for or by any incorporated library, society, or any free public library, or any free public library society, so far as said property shall be held exclusively for library purposes, or for the aid or support of the aged poor, or for the aid or support of poor friendless children, or for the aid or support of the poor generally; or for a hospital for the sick or disabled; and any fund given or held for the purpose of public education; almshouses and the land and buildings used in connection therewith, except that almshouse-estates when belonging to the town shall be subject to taxation for school purposes in the school district in which they are situated; the real and personal estate of any incorporate volunteer fire engine company in active service; the estate of any person who in the judgment of the assessors is unable from infirmity or poverty to pay the

tax; the bonds and other securities issued and exempted from taxation by the government of the United States. C. 44, S. 2.

The interest of a religious society in lands leased by them—the rents and profits being appropriated exclusively to religious uses—is exempted from taxation in general, but not from an assessment made upon it for benefits derived from the laying out of a new street in the vicinity under the act of January, 1854.—*Second Universalist Soc. in Providence v. Providence*, 6 R. I. 235; *In the Matter of College Street*, 8 R. I. 474.

A library owned by a corporation, the privilege of using it belonging only to its stockholders, is not a “public library” within the meaning of the statute.—*Providence Athenæum v. Tripp*, 9 R. I. 559.

A building for religious purposes is exempt from taxation, although used for educational purposes, so long as the use is merely incidental or occasional, or so long as the use, if habitual, is purely permissive and voluntary and does not interfere with its use for religious purposes.—*St. Mary's Church v. Tripp*, 14 R. I. 307.

Exempted Manufacturing Property.—The electors of any town qualified to vote on a proposition to impose a tax, when legally assembled, may vote to exempt, or may authorize the town council of such town or city for a period not exceeding one year, to exempt from taxation for a period not exceeding ten years, such manufacturing property as may hereafter be located in said town in consequence of such exemption, and the land on which such property is located.

Property so exempted under the preceding section shall not, during such period of exemption, be liable to taxation while such property is used for the purposes for which it was so located. C. 44, SS. 4, 5.

Highways, Benefits Added to Taxes.—The amount of benefit apportioned and assessed to the owners of real estate by the commissioners in their report, confirmed as aforesaid, and required by such report to be paid by the respective owners, shall be added to the taxes assessed against said real estate and the owners thereof by the assessors of taxes at the next or any subsequent annual assessment of taxes after the confirmation of said report, and shall be and remain a lien upon such real estate from and after such confirmation until it is paid, and shall be collected at the same time and in the same manner as the other taxes assessed against said real estate and the owners thereof; except in cases where the estates are owned by non-residents in the state, or minors, in which case one year in addition shall be allowed. C. 71, S. 42.

List of Ratable Property.—The assessors shall make a list containing the true, full and fair cash value of all the ratable estates in the town, placing real and personal estate in separate columns, and distinguishing those who give in an account from those who do not, and shall apportion the tax accordingly. C. 46, S. 8.

Manufacturing Corporations, Appraisal of Property.—In case any manufacturing company owning a manufacturing establishment has obtained or shall obtain a charter of incorporation, and all the members of the corporation shall be members of the company, or the members of

the corporation not members of the company shall own less than one-third of the stock of the corporation, the manufacturing establishment, including the real estate and machinery conveyed by the company to the corporation, shall be appraised by the assessors of taxes of the town wherein such manufactory shall be situated, and the amount of the capital stock of such corporation represented by such real estate and machinery shall not exceed the sum at which the same may be appraised as aforesaid, either in the whole under the provisions of this chapter, or in any part which may be exchanged by any member of the company for shares in the stock of such corporation, or in which he may pay assessments laid on his shares in the same.

Such assessors shall receive for their services in appraising such real estate and machinery the sum of ten dollars, to be equally divided between such of them as may act in the premises, not being less than a majority of the whole number, together with their necessary expenses in making such appraisalment, to be paid by the corporation.

A certificate of such appraisalment, signed and sworn to by the assessors making the same, shall be first recorded as aforesaid, in addition to the certificate required by section two of this chapter, before the liability of the members of such corporation for the debts and contracts of the same shall cease. C. 180, SS. 8, 9, 10.

Notice of Assessment of School Taxes.—The assessors shall give notice of such assessment by posting up notices thereof for ten days next prior to such assessment in three public places in the district; and after notice is given no person neglecting to appear before the assessors shall have any remedy for being overtaxed. C. 58, S. 3.

Notice to Tax-payers.—Before assessing any tax, the assessors shall post up printed notices of the time and place of their meeting, in three public places in the town, for three weeks next preceding the time of such meeting, and advertise in some newspaper published in the town, if any there be, for the same space of time. Such notices shall require every person and body corporate liable to taxation to bring in to the assessors a true and exact account of all his ratable estate, describing and specifying the value of every parcel of his real and personal estate, at such time as they may prescribe. C. 46, S. 6.

Notice must be given by the assessors as provided by the statute to every person or body corporate to bring in a true and exact account of all his ratable estate.—*Coventry Co. v. Assessors*, 16 R. I. 240.

A. neglected to make a return. It appeared that he owned a watch and stock in a corporation assessed and taxed in New Mexico. He was assessed here for \$5,000. The watch being ratable estate there was over-taxation and plaintiff was remediless.—*Tripp v. Torrey*, 17 R. I. 359.

The assessment of taxes is not to begin until after the time given to the taxpayers to bring in their accounts.—*Town Council, Petitioner*, 18 R. I. 417.

Proceedings for assessment of taxes are quasi-judicial, hence the notice required to be given to taxpayers before the assessment is essential to the validity of the assessment.—*McTwiggan v. Hunter*, 18 R. I. 776.

Penalty of Town for Neglect to Assess State Tax.—If the assessors neglect to assess, or the collector to collect any town's proportion of a state tax, or if any town neglect to appoint assessors or a collector, the town shall forfeit double the amount of their proportion of the tax, to be recovered by the general treasurer, in an action of debt against the delinquent town, and to be collected on execution from the property of the town, or of the inhabitants thereof. C. 49, S. 9.

Personal Property, Where Taxed.—All ratable personal property shall be taxed to the owner thereof in the town in which the owner shall have had his actual place of abode for the larger portion of the twelve months next preceding the first day of April in each year, except as provided in the following clauses of this section:

“First. The fixtures enumerated in section three of this chapter, all picking, carding, spooling, drawing, spinning, and reeling frames, dressing and warping machines, looms, tools and machines of all sorts, propelled by steam, water, electric or other power, in any factory, machine-shop, print-works, manufacturing or other establishment of any kind, and all live-stock and farming-tools on farms, shall be taxed to the owner, in the town where they are situated, in the same manner as if the owner resided there. All fixtures, tools, machinery, stock in livery stables, live-stock, farming-tools, goods, wares, merchandise, and other stock in trade, including stock in the business of manufacturing or of the mechanic arts, and all other tangible personal property situated or being in any town, in or upon any store, mill, dock-yard, piling-ground, place for sale of property, shop, office, mine, quarry, farm, place of storage, manufactory, warehouse, or dwelling-house therein, belonging to any corporation incorporated by the general assembly or under the laws of this state, shall be taxed to such corporation in the town where said property shall be or is situated.

“Second. Partners in mercantile or other business, whether residing in the same or in different places, shall be jointly taxed under their partnership name, in the place where their business is carried on, for all the personal property pertaining to such business. If partners have places of business in two or more towns, they shall be taxed in each of such towns for the partnership property pertaining to the business transacted therein. Tangible personal property of the partnership, situated or being in any town where the partnership has no place of business, shall be taxed therein to the partners jointly under their partnership name. Each partner shall be liable for the whole of the copartnership tax.

“Third. All tangible personal property in this state belonging to persons under guardianship shall be taxed to the guardian in the town where the same shall be or is situated; and all other personal property in the hands of guardians shall be taxed to them in the town where the ward resides, if in this state, and if not, in the town where the guardian was appointed.

"*Fourth.* All tangible personal property in this state held in trust by any executor, administrator, or trustee shall be taxed to such executor, administrator, or trustee in the town where the same shall be or is situated; all other personal property, held in trust by any executor, administrator, or trustee, the income of which is to be paid to any other person, shall be taxed to such executor, administrator or trustee in the town where such other person resides; but if such person resides out of the state, then in the town where the executor, administrator, or trustee resides; and if there be more than one such executor, administrator, or trustee, then in equal proportions to each of such executors, administrators and trustees, in the towns where they respectively reside.

Where the trust fund is to accumulate and to be distributed according to contingencies still pending, it must be regarded for taxation as belonging to the trustees, and be taxed to them as the owners in the town where they reside.—*Greene v. Mumford*, 4 R. I. 313.

Where a gift was one of income and not an annuity, the beneficiary is liable to pay the taxes on the stock as long as she receives the income from it.—*Pearson v. Chace*, 10 R. I. 455.

A trustee residing in Newport held in trust mortgages on realty there, having been appointed by a court in South Carolina. The *cestui que trust* resided in New York. The trust estate was properly taxed in Newport to the trustee.—*Petition of Ailman*, 17 R. I. 362.

A testator gave all his estate to his widow for life with remainder over. The administrator charged the taxes in settling his final accounts to the widow. The taxes were properly charged and deducted from the income payable to the widow.—*Williams v. Herrick*, 18 R. I. 120.

Trust estate consisting of personal property is to be taxed in the same town where the private personal estate of the beneficiary under the same trust is taxed.—*Clarke v. Addeman*, 26 R. I. 168.

"*Fifth.* All other personal property in the hands of executors or administrators shall be taxed to them in the town where the deceased person resided.

"*Sixth.* All merchandise, stock in trade, lumber and coal, stock in livery stables, machinery and machine tools, and all other tangible, personal property being or situated in any town and belonging to any person, partnership, limited partnership, joint stock company, or association, or corporation not residing, or not located in this state, or belonging to persons unknown to the assessors, shall be taxed in such town to the person, partnership, joint stock company, or association, or corporation owning the same, if known, otherwise shall be taxed to the owner, a person unknown to the assessors. The collector may distrain and sell the property in the same manner as provided in chapter 48 of the General Laws. Persons residing in this state and owning property of the description mentioned in this clause, located in and taxed in any other state, shall not be taxed therefor in this state.

"*Seventh.* The shares in national banking associations held by persons residing without the state shall be taxed in the town in which such banking association is situated. Residents of this state shall not be taxed in this state for shares held by them in national banking asso-

ciations situated without this state, the shares of which are taxed in the states where such national banking associations are situated.

"Eighth. No shareholder shall be taxed for shares held in any corporation within or without this state, or banking association within or without this state, which in its corporate capacity, is taxed for an amount equal to the value of its real estate and tangible personal property, and equal to the market value of its shares; but in case such corporation or association is taxed for less than said amount, such shareholder shall be taxed only for the difference between the market value of each share by him held and the proportionate amount per share at which the corporation or association was last assessed as aforesaid.

"Ninth. The personal property, liable to taxation of any religious or benevolent society shall be taxed in the town where the corporation holds its meetings.

"Tenth. No persons, copartnerships, or bodies corporate resident of this state shall be liable to taxation on personal property except upon the surplus of the ratable personal estate owned by such persons, copartnerships, or bodies corporate over and above their actual indebtedness.

"Eleventh. Deductions on account of the actual indebtedness of such persons, copartnerships, and bodies corporate shall be allowed in each town where such persons, copartnerships, and bodies corporate are taxable in the proportion in each town that the amount of the personal property of such persons, copartnerships, and bodies corporate taxable in such town bears to the total amount of the personal property of such persons, copartnerships, and bodies corporate taxable in all the towns of the state." C. 45, S. 9.

Platted Streets; Costs, How Assessed.—The compensation of commissioners appointed to define grades of private ways and all sums of money expended for the plat of such ways and other necessary disbursements allowed by the town council, to be paid by the petitioners, shall be equally apportioned and assessed to such petitioners by the assessors of taxes, and, if not paid forthwith, shall be added to the taxes assessed against the platted street or way belonging to the petitioners and the petitioners owning the same, at the next annual assessment of taxes. C. 72, S. 41.

Poll Taxes; Assessment.—The assessors of taxes of each town shall, at the time of the annual assessment of town taxes therein respectively, assess against every person in said town, who, if registered, would be qualified to vote, a tax of one dollar, or so much thereof as with his other taxes shall amount to one dollar.

The assessors of taxes of each town, or any person by them authorized, may, at any time within three months preceding the time of assessing the poll-tax in their respective towns, require from any and every inhabitant of such town such information as may be deemed necessary by

them, or either of them, to enable said assessors to decide whether or not any inhabitant is liable to assessment for said tax; and any person who shall refuse to give such information, or shall wilfully make any false statements for the purpose of deceiving in the giving of such information, shall be punished by fine not exceeding twenty dollars, or imprisonment in the county jail for a term not exceeding ninety days.

The assessors of taxes on completing the assessment of taxes as prescribed in this chapter, shall date and sign, and within three days thereafter deposit the same in the office of the town clerk. C. 47, SS. 1, 2, 3.

Persons Rendering an Account.—If any person shall bring in an account as aforesaid, the assessors shall nevertheless assess such person's ratable estate at what they deem its full and fair cash value. C. 46, S. 14.

It is no objection to the validity of an assessment that the assessor did not tax a parcel of real estate, of the ownership of which they were ignorant.—*Capwell v. Hopkins* 10 R. I. 378.

This provision is for the benefit of the taxpayer and is mandatory. A sale of land for taxes is void unless the land is liable for all the taxes for which it is sold.—*Young v. Joslin*, 13 R. I. 675.

A mortgage is not an alienation within the meaning of the statute, where the land remains in possession of the mortgagor.—*People's Savings Bank v. Tripp*, 13 R. I. 621.

The tenant for life is liable for annual taxes first.—*Weaver v. Arnold*, 15 R. I. 53.

An assessment list held valid although dollar signs were not used, the total being stated by the assessors' certificate in dollars and cents.—*Hopkins v. Young*, 15 R. I. 48.

Sales of a practical interest for taxes held invalid. Only the interest liable and so much as is needed should be sold for taxes.—*Weaver v. Arnold*, *Ibid.* 53.

The amount to be repaid by one who wishes to redeem should be the amount paid for the real estate sold for taxes, and any owner of an interest in the property may redeem upon such payment.—*Chace v. Durfee*, 16 R. I. 248.

Property Subject to Taxation.—All real property in the state and all personal property belonging to the inhabitants thereof, whether individuals, copartnerships, or corporations, and all tangible, personal property located in the state belonging to non-residents, shall be liable to taxation unless otherwise specially provided. C. 44, S. 1.

The rails, sleepers, bridges, etc., of a railroad corporation, together with the easement in lands within the located limits of the road, are real estate and as such liable to taxation in the towns where they are situated.—*Providence & W. R. R. Co. v. Wright*, 2 R. I. 459.

One who has ceased to be an inhabitant of the state is not liable to be taxed for personal property in the town where he formerly resided, at the time of assessment. The statute applies to inhabitants only.—*Barber v. Potter*, 8 R. I. 15.

Shares of stock in a corporation of another state are not exempt from taxation.—*Dyer v. Osborne* 11 R. I. 321.

The word "inhabitants" includes corporations, and their property within the State is subject to taxation.—*Tripp v. Insurance Co.*, 12 R. I. 435.

A trustee residing in another state who holds no property as trustee in

Rhode Island is not liable to taxation in the town where the *cestuis quod trustent* reside.—*Anthony v. Caswell*, 15 R. I. 159.

Real Estate Assessed to Owners.—Taxes on real estate shall be assessed to the owners, and separate tracts or parcels shall be separately described and valued as far as practicable: *Provided, however*, that no defect in description or mistake in valuation shall be taken advantage of by any tax-payer in order to avoid the payment of a tax assessed against him, unless he shall have brought to the assessors a true and exact account of all his ratable estate, describing and specifying the value of every parcel of his real and personal estate, at such time as they may prescribe for the assessing of the tax.

The mortgagor shall be deemed to be the owner of mortgaged real estate, so long as the same is in his possession.

Estates in the possession of a tenant for life may be taxed to the tenant for life, who, for the purposes of taxation, shall be deemed the owner.

Undivided real estate of any deceased person may be assessed to the estate, or heirs, or devisees of the deceased, generally, until a record of a division be made, or until they give notice to the assessors of the division, and of the name of the persons holding the portions thereof; and each heir or devisee shall be liable for the whole of the tax, and shall have a lien therefor on the shares of his associate heirs or devisees in said estate, for their proportion of said tax, if paid by him. C. 45, SS. 4, 5, 6, 7.

A tax cannot be ordered for more than one per centum of the taxable valuation of the property. Where a town ordered a tax to be assessed at the rate of one dollar and fifteen cents on each one hundred dollars of its ratable property it was held that the whole tax was not thereby void as the excess was separable from the lawful levy.

The objects of a tax need not be specified in the vote ordering the assessment passed at the regular town meeting held under a warrant expressing the objects of the meeting among other things, "for ordering town taxes."—*Mowry v. Mowry*, 20 R. I. 74.

An entire assessment will not be held void, if what is legal can be separated from what is illegal in it.—*Mowry v. Slatersville Mills*, 20 R. I. 94.

An account carried in to the assessors containing an item of shares in railroad corporations without giving the names of the corporations does not comply with the requirement of the statute. So an item of "goods, chattels, wares and merchandise," not specifying the parcels or the value of each parcel is not sufficient.—*Clark v. Tinkham*, 20 R. I. 790.

The assessment must be deemed to have been made on the day following the last date on which the taxpayers were notified to bring in their accounts.—*McAdam v. Honey*, 20 R. I. 351.

The notice given by assessors is fatally defective if it does not notify the taxpayers to bring in an account of their ratable estate.—*Wood v. Quimby*, 20 R. I. 493.

Where a by-law of a corporation provided that the several officers of the company shall perform such duties as may be assigned to them by the president, it was held that an account of the ratable estate of the corporation brought in and sworn to by a person appointed for that purpose by the vice-president, which appointment was confirmed by the president, was sufficient.—*N. Y., N. H. & H. R. R. Co. v. Smith*, 20 R. I. 134.

Real Estate, Where Taxed.—All real estate shall be taxed in the town where the same is situated.

Buildings on leased land, the leases whereof are in writing and recorded, shall, for the purposes of taxation, be deemed real estate.

The main wheel, steam engine, boilers and shafts, whether upright or horizontal, drums, pulleys and wheels attached to any real estate for operating machinery, and all steam-pipes, gas-pipes, water-pipes, ammonia-pipes, air-pipes, gas-fixtures, electric-fixtures and water-fixtures, attached to, and all kettles set and used in any manufacturing establishment, are declared to be real estate when owned by the owners of the real estate to which they are attached. C. 45, SS. 1, 2, 3.

A personal chattel is a fixture when it is so attached to the real estate that it cannot be severed from it without violence and injury to the freehold. And it is a fixture whether annexed for use, for ornament, or mere caprice.—*Providence Gas Co. v. Thurber*, 2 R. I. 15.

Movable machinery which is to be taxed in the town where it is situated is not to be treated for taxation as real estate and taxed specifically, but it is to be deemed according to its nature to be a portion of the personal property of its owner, from which the amount of the indebtedness of the owner is to be deducted and a tax levied on the excess.—*Steere v. Walling*, 7 R. I. 317.

State Tax.—Whenever any tax is ordered by the general assembly to be assessed and levied on the inhabitants or ratable estates within the state, and no special provision is otherwise made in the act ordering said tax, the secretary of state shall forthwith send a certified copy of the act imposing the tax to the town clerk of every town, who shall notify the assessors thereof and deliver such copy to them; and the assessors shall immediately give notice and proceed to assess the same or their town's proportion thereof, in the same manner as is by law provided for town taxes. C. 49, S. 1.

State Tax, Assessment Completed.—The assessors having completed the assessment shall date, sign and deposit the same in the office of the town clerk who shall forthwith send a copy thereof to the general treasurer, with the names of the town treasurer and collector of taxes of the town, and their post office address. C. 49, S. 3.

Time of Assessment.—The assessors shall assess and apportion any tax on the inhabitants of the town and the ratable property therein at the time ordered by the town. C. 46, S. 4.

Trees, Plantations Exempted.—Whenever there shall have been planted one or more acres of land, worth not more than twenty-five dollars per acre, in the state, not at the time of planting sprout or wood land, to timber trees of any of the following kinds: Chestnut, hickory, white-ash, oak, maple, European-larch, pine or ailantus, in numbers not less than two thousand to the acre, the owner of such plantation of trees may, after they shall have grown to an average of four feet in height,

appear before the board of assessors of taxes in any town in which such plantation may be located, and prove the facts above mentioned and specified in reference to such plantation; and upon such proof, such plantation of trees, and the ground in which they are growing, shall be exempted from all taxation whatsoever for a period of fifteen years next thereafter. C. 44, S. 3.

Value for Assessment.—All property liable to taxation shall be assessed at its full and fair cash value. C. 46, S. 3.

Taxpayers are taxable in the several towns where they reside when the taxes in such towns are assessed.—*Ailman v. Griswold*, 12 R. I. 339.

Assessors should tax every citizen according to his account, unless they believe the account to be false or the accountant unable to pay the tax.—*Sullivan v. Peckham*, 16 R. I. 525.

AUCTIONEERS.

One or more auctioneers are elected annually at the annual meeting of the town. C. 39, S. 1.

Auctioneers, Special.—In addition to the auctioneers elected in town meeting, the town council of any town may from time to time appoint as many more for their town as they may deem expedient, to hold their offices until the next annual election of town officers. C. 159, S. 1.

BUILDINGS INSPECTOR.

The town council of every town is required to elect annually in the month of January an inspector of buildings, whose compensation is fixed by the council electing him. C. 108, S. 2.

It is the duty of the inspector from time to time as may be necessary to make a careful and thorough inspection of all buildings in their town which in their opinion, by reason of their height, character or number of stairways, number of persons ordinarily therein or at work therein, nature of use, or of the industries or occupations carried on therein, or for any other reason, might be specially dangerous to persons therein in case of conflagration in said buildings.

He is also required to inspect elevators. *Ibid.*, SS. 3, 16.

He may require owners to provide fire-escapes for their buildings and may exempt others, and give certificates of such exemptions, and of compliance with the law, and may revoke the same.

Appeals may be taken from the action of an inspector in refusing to give a certificate of exemption, or of compliance with the law, and the town council is constituted a board of appeal from the inspector. *Ibid.*, SS. 4, 5, 6, 10, 14.

Burial Agent.—The town council of any town shall annually designate some proper person, other than those designated by law for the care of paupers or the custody of criminals, who shall cause to be interred the body of any honorably-discharged soldier, sailor, or marine, who served

in any period of war in the army, navy, or marine corps of the United States, and was honorably discharged therefrom, who shall die within this state and who may not have left sufficient means to pay his funeral expenses. C. 89, S. 2.

CANVASSERS, BOARD OF.

See "Town Council."

CATTLE WEIGHERS.

The town councils of the several towns shall, annually, in the month of April, appoint not less than two persons, for the purpose of weighing neat-cattle slaughtered for sale in their respective towns. C. 40, S. 5.

COAL WEIGHERS.

The town councils of the several towns shall appoint one or more persons to be weighers of coal and other articles of merchandise, who shall be sworn and be removable at the pleasure of the town council appointing them, and shall receive such fees as may be fixed by the town council of the several towns which shall be paid by the seller; *Provided*, that no person shall act as a public weigher of coal or other merchandise of which he is either the buyer or seller, or in the sale whereof he has any interest. C. 167, S. 21.

COLLECTOR OF TAXES.

Election.—One or more collectors of taxes are chosen annually at the annual town meeting. C. 39, S. 1.

In case of a failure to elect by the town, the office may be filled by the town council. *Ibid.*, S. 13.

The town council may fill a vacancy in the office until the next town meeting for election. *Ibid.*, S. 20.

The collector appointed to complete the collection of taxes, in case of a vacancy, has the same power as is by law given to the collector first appointed. *Ibid.*, S. 18.

Bond.—Every collector of taxes shall give bond, with sufficient surety, for the faithful performance of such trust, to the town treasurer of the town in which he is chosen, in such sum as the said town or the town council of said town shall appoint, not exceeding double the amount of the tax with the collection of which he shall be charged. Whenever any town shall elect its town treasurer collector of taxes, the bond to be given by such collector under the provisions hereof shall be given to the town, and shall be delivered to the town council for safe keeping, and upon the happening of any breach of the condition of the said bond, an action thereon may be commenced in the name of the town to which it was given. C. 39, S. 17.

Compensation.—Collectors shall be paid for collecting at the rate of five per centum, unless they shall have agreed with the town for a less sum; which fees shall be paid out of the town treasury. In case of distraint of personal property, or levy on land, the collector shall have the same fees as sheriffs have in similar cases. C. 50, S. 4.

Duties, General.—The collector of taxes of the town shall collect any tax levied by the town, by the time directed for the payment thereof, and shall pay over the same to the town treasurer, or his successor in office, by the time limited therefor. C. 48, S. 1.

Absent Person, Proceedings Against.—If any person legally taxed shall be out of the state or depart therefrom, leaving no property liable for the tax, the collector may summon the attorney, agent, factor, trustee, or debtor of such person before the district court of the district in which the town where the tax is assessed is situated, to declare on oath how much property, if any, of such absent person, he has in his possession; and if he has sufficient property he shall forthwith pay such tax and charges, or deliver to the collector sufficient property therefor. C. 48, S. 28.

Action Against.—The town treasurer may have his action against any collector and his sureties, who shall neglect to pay in any tax to the town treasury by the time limited therefor. *Ibid.*, S. 31.

Aid, May Require.—Every collector shall have the same right to require the aid or assistance of the persons present, in the performance of his duty, which a sheriff now has by law. *Ibid.*, S. 35.

Distraint.—The collector may distraint personal property, and may sell the same; *provided* that property exempt from attachment or distress by the laws of this state or of the United States shall not be liable to be distrained for any taxes whatsoever. C. 48, SS. 17, 18.

Distress Warrant.—If any person so summoned shall neglect to appear, or refuse to make oath, or having made oath shall refuse to pay such tax and charges, or to deliver to the collector sufficient property therefor, if such he has, such district court shall forthwith grant to the collector a warrant of distress against the proper goods and chattels of such person so summoned, and the collector may distraint and sell the same wherever found, or so much thereof as will pay the tax and all interest and expenses, in manner provided by this chapter; and said district court shall have jurisdiction in the premises, although the amount involved shall exceed three hundred dollars. *Ibid.*, S. 29.

Execution Against.—In every execution issued by any court against a delinquent collector or his sureties, the words, "and real estate," shall be inserted immediately after the words, "goods and chattels," and the officer charged therewith shall immediately attach and take possession of all the estate, real and personal, of such collector, within his precinct,

and shall immediately advertise the same to be sold within twenty days thereafter at public auction; and he shall cause enough thereof to be sold to pay the amount of such execution, and all incidental costs and expenses; and said sale may be adjourned from time to time. *Ibid.*, S. 32.

List of Tax-payers Furnished Electors.—Every officer authorized to receive taxes shall, upon like request and payment or tender, and without unreasonable delay, furnish to any elector a certified list of those who have paid to him state and town taxes, and the amounts and times of such payments; and shall grant certificates setting forth whether a certain person has or has not paid to him such taxes, and, if paid, to what amount and at what time; and every such officer who shall refuse or unreasonably delay to furnish such lists or certificates, upon payment or tender as aforesaid, shall for every such offence be fined not less than twenty-five dollars nor more than two hundred dollars. C. 7, S. 14.

Notice to Persons Not Taxed.—In case the collector shall advertise for sale any property, real, personal or mixed, in which any person other than the person to whom the tax is assessed has an interest, he shall, provided the interest of such other person appears upon the records of the town, leave a copy of the notice of such sale at the last and usual place of abode, or personally with such other person, if within this state, twenty days prior to the time of such sale. C. 48, S. 12.

A tax sale without notice to a mortgagee held invalid.—*Weaver v. Arnold*, 15 R. I. 53.

Notice to Non-residents.—If such other person have no last and usual place of abode within this state, then a copy of said notice shall be sent by mail to such person, at his place of residence, if known, twenty days prior to the time of such sale. *Ibid.*, S. 73.

Notice to Residents.—If the person to whom the estate is taxed be a resident of this State, the collector shall, in addition to publication, as required in section ten of this chapter, cause notice of his levy, and of the time and place of sale to be left at his last and usual place of abode, or personally served on him at least twenty days previous to the day of sale. *Ibid.*, S. 11.

A tax sale without notice to resident heirs to whom it belonged held invalid.—*Thurston v. Miller*, 10 R. I. 358.

Personal Property, follow.—If any person or property taxed in one town removes or is removed into another town before the tax is collected, the collector may follow such person or property into any town, and levy or collect the tax with the same power as if not removed. *Ibid.*, S. 24.

Personal Property, Sales of; Notice; Surplus.—In all cases where personal property shall be levied on by any collector, he shall cause notice thereof and of the time and place of sale, to be left at the last and usual place of abode of the owner, or personally to be given to him,

at least five days previous to the appointed time of sale, if such owner have a last and usual place of abode in the state or if personal notice can be given to him.

The collector shall also in all cases advertise the same for three successive weeks in a newspaper, if there be one published in the town, if not, in the county, and shall also post up notices in three public places in said town, at least twenty days previous to the appointed time of sale.

If such owner do not pay the amount of the tax, with the interest or percentage and all costs and charges, by the time appointed for the sale, the collector shall sell the same, or enough to pay said sums, at public auction.

Any property or surplus of money remaining shall be returned to the owner or person entitled to receive it. If no owner or person entitled to receive the same can be found by the collector, he shall deliver such property or surplus of money to the town treasurer, who shall hold the same subject to the call of the owner thereof. *Ibid.*, SS. 19-22.

Personal Property, Sales; Removal.—Any collector may, with consent of the owner, remove personal property for sale to any town or place, where it may be sold to the best advantage, giving notice to the owner as before provided, and giving notice as provided by section twenty of this chapter, in the town or place where the sale is to be made. *Ibid.*, S. 23.

Personal or Real Estate, Collect from Either.—If any person is taxed for several parcels of real estate, each of such parcels shall be liable for the payment of the tax assessed against it, even though the same may have been aliened, and no such parcel shall be liable for any tax assessed against any other parcel. If any person is taxed for real estate and for personal estate in the same tax, the whole of such person's tax may be collected either out of the real or personal estate. If any person is taxed for several parcels of real estate and for personal estate in the same tax, the tax on personal estate may be collected out of the real estate, and each of such parcels shall be liable for the payment of the tax assessed against it, together with such portion of the tax on the personal estate as the assessed value of such parcel bears to the aggregate assessed values of all of such parcels. Nothing herein contained shall be so construed as to affect any pending litigation, or any proceedings taken or to be taken for the collection of any tax due and payable previous to July 1, 1898.

In case of a life estate, the interest of the tenant for life shall first be liable for the tax. *Ibid.*, SS. 7, 8.

As to annual taxes the estate of a life tenant is first liable.—S. 10; *Weaver v. Arnold*, 15 R. I. 53.

Where an estate owned by several heirs was levied on, advertised and sold, but notice given to only one heir, the sale was held void for want of notice to the other heirs.—*Thurston v. Miller*, 10 R. I. 358.

Suit for Tax; Judgment; Execution.—The collector of any tax may recover the amount thereof in an action on the case against the person taxed, and in the declaration it shall be sufficient to set forth that the action is to recover a specified sum of money, being a tax assessed against the defendant, specifying the town in which said tax was assessed and the time of ordering and assessing the same.

If judgment be rendered in favor of the collector, he shall have an allowance for his reasonable trouble in attending to the suit, to be taxed by the court in the bill of costs, and execution shall issue against the real and personal estate of the defendant, and the levy of the execution upon any real estate, upon which a lien for such tax is created by this chapter, shall be deemed to relate back, and take effect from the time of commencement of such lien. *Ibid.*, SS. 26, 27.

"All public officers who are proved to have acted as such are presumed to have been duly appointed until the contrary is shown," is a rule that applies to tax collectors.—*Kent v. Atlantic Delaine Co.*, 8 R. I. 305.

Actions to collect taxes amounting to less than one hundred dollars may be brought in the Court of Common Pleas or the Supreme Court.—*Tripp v. Torrey*, 17 R. I. 359.

Poll Taxes; Notice.—Collectors of taxes shall give notice for at least one week previous thereto of the time and place for the payment of the taxes assessed under the provisions of this chapter, by posting up notices thereof in three or more public places in every town, and one in each voting-district in any town divided into voting-districts for the purpose of voting, and by publication at least once in one or more newspapers, if any there be, published in such town. C. 47, S. 7.

Poll Taxes; Powers.—The collector of taxes of each town shall have the same power, and shall proceed in like manner, to collect the taxes assessed under the provisions of this chapter, as is given and prescribed for the collection of taxes by the provisions of chapter forty-eight: *Provided*, the collector of taxes may specially authorize the town clerk to receive and receipt for the tax herein provided for from any person. C. 47, S. 5.

Real Estate Taxes a Lien.—All taxes assessed against any person in any town for either personal or real estate shall constitute a lien on his real estate therein.

All taxes assessed against the owner of any real estate shall constitute a lien on such real estate in any town, for the space of two years after the assessment, and, if such real estate be not aliened, then until the same is collected.

If any building on leased land described in section two, chapter forty-five, be removed, the lien thereon shall not be affected, but the collector may follow the same out of the town if necessary, and sell it with the same effect as if not removed.

The collector shall, in case he receives a check for the tax of any

person or corporation, hold a lien on the property of any such person or corporation, the same as if such check had not been received: *Provided*, such check shall be presented for payment within ten days of its receipt. C. 48, SS. 2-5.

Property is not aliened by a mortgage if the mortgagor retains possession. A tax is a privileged lien and will not be marshalled by a court of equity with other liens. A tax may be collected from either personal or real estate at the discretion of the collector.—*People's Savings Bank v. Tripp*, 13 R. I. 621.

Taxes are a lien on real estate. The purchaser of two tracts sold took them subject to a tax lien from which the first tract sold was freed by prior alienation, as the other tracts were sufficient to pay the tax. The rule is as in *Shylock's case*—no more shall be taken than is needed to satisfy the tax.—*Bull v. Griswold*, 14 R. I. 22.

Real Estate; Sales.—The collector may advertise and sell any real estate liable for taxes in the manner hereinafter directed.

In all cases where any parcel of real estate is liable for payment of taxes, so much thereof as is necessary to pay the tax, interest, costs and expenses, shall be sold by the collector, at public auction, to the highest bidder, after notice has been given of the levy, and of the time and place of sale, in some newspaper published in the town, if there be one, and if there be no newspaper published in the town, then in some newspaper published in the county, at least once a week for the space of three weeks, and the collector shall also post up notices in two or more public places in the town for the same period. *Ibid.*, SS. 9, 10.

Sales, Adjournment.—Any sale of real or personal estate or of any interest therein, liable for the payment of taxes by the provisions of this chapter, may be adjourned from time to time. *Ibid.*, S. 25.

Growing Wood; Rents and Profits.—Whenever the real estate cannot in the judgment of the collector be divided without detriment, the collector, under the direction of the town council, may sell the wood growing on said land, or the rents and profits of the whole, at public auction, for a term of time sufficient to satisfy the tax, interest, costs and expenses, or may, under their direction, sell the whole, and shall pay over the surplus, if any, to the town treasurer for the benefit of the owner or any person entitled to receive it. *Ibid.*, S. 6.

Entry not Necessary; Return.—No entry upon the land by the collector shall be deemed necessary; but the collector, in all cases of sales of real estate, shall make a return of all his proceedings under oath into the town clerk's office, within ten days after the sale. *Ibid.*, S. 14.

Parol evidence is admissible to show that a collector made return of his proceedings into the city clerk's office ten days after the sale of an estate for taxes.—*Thurston v. Miller*, 10 R. I. 358.

Removal from Office.—Any collector may be removed from office by the town or town council, in which case a new warrant may issue to the

new collector for the collection of the portion of any tax not collected. *Ibid.*, S. 36.

Return of Taxpayers to Canvassers; Penalty.—Every officer authorized to receive taxes shall present to the board of canvassers at every meeting for the purpose of canvassing, alphabetical lists of all persons registered on or before the last day of June next preceding, in their respective towns, who shall have paid such officer their taxes, specifying the amount paid by each and the time when such payment was made, and that the tax was assessed upon property which has not been before presented.

Every officer authorized to receive taxes, neglecting or refusing to make such return to the board of canvassers as aforesaid, shall for every offence be fined not less than one hundred dollars nor more than one thousand dollars. C. 7, SS. 15, 16.

State Taxes Collected.—The general treasurer shall forthwith issue and affix to said copy (of the list furnished by the town assessors) his warrant under his hand, and which need not be under seal directed to the collector of the town, commanding him, in the name of the State, to collect the several sums therein expressed against each person's name, by such time as by law is limited, and to pay over the same to him or to his successors in office.

The collector shall proceed forthwith to collect the same, in the same manner as is provided in case of town taxes. C. 49, SS. 4, 5.

Warrant.—The town treasurer shall forthwith issue and affix to the copy of the assessment of taxes delivered to him by the town clerk, a warrant under his hand, which need not be under seal, directed to the collector of taxes of the town, commanding him to proceed and collect the several sums of money therein expressed, of the persons and estates liable therefor, by the time directed by the town and to pay over the same to him or to his successor in office. Whenever any town shall elect its town treasurer collector of taxes, such warrant shall be issued to the town treasurer as collector of taxes by the town clerk. C. 46, S. 22.

Warrants in Force.—All warrants for the collection of taxes shall continue in force until the whole tax is collected, notwithstanding the time appointed for collecting the tax or the year of office may have expired, and notwithstanding the collector may have paid the tax into the town treasury. C. 48, S. 34.

CONSTABLES.

Constables are elected annually at the annual town meeting. The number is determined by the requirements of the town, and varies in different towns. C. 39, S. 1.

Bond.—Every constable shall at the time of his being sworn into office, give bond, with sufficient sureties to the town treasurer in the sum of one thousand dollars, for the faithful performance of the duties of his office. C. 232, S. 2.

Animal Industry Inspectors; Aid.—The inspectors of the bureau of animal industry of the United States, in co-operation with the state board of agriculture, shall have the power to call on sheriffs, constables and peace officers to assist them in the discharge of their duties in carrying out the provisions of the act of Congress approved May 29, 1884, establishing the bureau of animal industry; and it is hereby made the duty of sheriffs, constables and peace officers, to assist said inspectors when so requested. C. 99, S. 19.

Bad Fame, Persons of; Removal.—Notice to persons of bad fame of whom complaint has been made by overseers of the poor is served by the town sergeant or any constable of the town. C. 80, S. 26.

Bribes, Receiving; Penalty.—Every sheriff, deputy-sheriff, town sergeant, city sergeant or constable, who shall receive from any defendant or any other person any money or other valuable thing as a consideration, reward or inducement for omitting or delaying to perform any duty pertaining to his office, shall be imprisoned not exceeding six months or be fined not exceeding five hundred dollars. C. 276, S. 21.

Counterfeiting Implements, etc., Seizure.—Whenever the existence of any false, forged or counterfeit bank bills or notes, or any plates, dies or other tools, instruments or implements used by counterfeiters or designed for the forging or making of any false or counterfeit notes, coin or bills, shall come to the knowledge of any constable or police officer in this state, such officer shall immediately seize and take possession of the same and deliver them into the custody of the common pleas division of the supreme court in the county in which the same shall be. C. 280, S. 11.

Cruelty to Animals.—Every sheriff, deputy-sheriff, constable and police officer shall prosecute all violations of the provisions of this chapter which shall come to his knowledge.

Any officer authorized to serve criminal process may enter any place, building or tenement where there is an exhibition of the fighting of birds or animals, or where preparations are making for such exhibition, and without a warrant arrest all persons there present and take possession of the birds or animals engaged in fighting and of all birds and animals there found and intended to be used or engaged in fighting; such persons shall be kept in custody in jail or other convenient place not more than twenty-four hours, Sundays and legal holidays excepted. C. 114, SS. 8, 11.

Fighting, Arrest for.—Every sheriff, deputy sheriff, town sergeant, constable, or police officer shall arrest forthwith in any county any per-

son violating any of the provisions of the three preceding sections (concerning fighting), and shall detain such person until a warrant can be obtained for his arrest. C. 277, S. 15.

Fruit or Vegetables; Stealing; Arrest.— Every constable who shall discover any person or persons in the act of taking and carrying away any growing fruit or vegetables, shall arrest such person or persons and detain him or them in custody until a complaint can be made against him or them, and he or they may be taken on a warrant issued upon such complaint: *Provided*, that such arrest and detention without a warrant shall not continue longer than the space of six hours. C. 279, S. 24.

Jurors, Summons to.— The town sergeant or constable shall forthwith make service of the notification received by him, upon the persons named therein as jurors, by delivering to each of such persons, or by leaving at their last and usual place of abode, a notice substantially in the form given in the statute.

Such notification, when served, shall be returned forthwith by the officer serving the same to the clerk of the division for which said jurors were drawn. Such sergeant or constable shall be paid fifty cents out of the town treasury for warning each person. C. 227, SS. 22, 23.

Constables are exempt from jury duty. *Ibid.*, S. 3.

Oyster Fisheries; Arrests.— Any police constable may, in view of the commission of any offence against the provisions of this chapter upon any public waters of the state, arrest the offender without warrant and detain him for prosecution not exceeding twenty-four hours. C. 170, S. 36.

Pauper, Removal.— The town sergeant or constable charged with an order for the removal of any poor person may go into any town to enforce said order and shall make return upon said order to the town council who granted the same, at their next meeting. C. 80, S. 19.

Police, State, Members of.— The sheriffs of the several counties and their deputies, and the town sergeants, constables and chiefs of police of the several towns and cities, shall constitute a state police, and it shall be their duty to see that the laws of the state are observed and enforced within their respective counties and towns, and it shall be their special duty to use their utmost efforts to repress and prevent crime by the suppression of all unlicensed liquor shops, gambling places and houses of ill-fame, and they shall also do so on request of any taxpayer of any town or city, and may command aid in the execution of the authority herein conferred. Any member of the state police who shall wilfully neglect or refuse to perform the duties imposed by this section shall be fined not exceeding five hundred dollars and be thereafter rendered ineligible to be again appointed to any such position. C. 102, S. 17.

Quarantine, Enforce Rules.—Every sheriff, deputy-sheriff, town sergeant and constable shall carry the rules and regulations of the town council into effect. C. 95, S. 11.

Riots, Order to Disperse; Arrests.—If any persons to the number of twelve or more, being armed with clubs or other weapons, or if any number of persons consisting of thirty or more shall be unlawfully, routously, riotously, or tumultuously assembled, any constable shall, among the rioters, or as near to them as he can safely come, command silence while proclamation is making and shall openly make proclamation in substance as given in the statute.

If any persons after the making of proclamation shall not forthwith disperse themselves, the officer may command sufficient aid and seize, arrest and secure in custody any or all such persons, so that they may be proceeded against according to law, and if any such persons shall be killed or wounded by reason of their resisting the persons endeavoring to disperse or seize them, the constable and his assistants shall be indemnified and held guiltless. C. 278, S. 1.

Town Meetings, Notice; Service.—Notice of a town meeting prescribed by law is given by the town clerk issuing his warrant, directed to the town sergeant or one of the constables of the town requiring him to post, at least seven days before the day appointed for such meeting, written notification in three or more public places in the town. C. 37, S. 8.

Town Meetings, Special; Notice.—The notice of meetings when called by request shall be given by the town clerk issuing his warrant, directed to the town sergeant or constable requiring him to give personal notice to the individual electors of the town entitled to vote on the business to be then transacted, of the time when and the place where said meeting is to be holden and of the business to be transacted therein. *Ibid.*, S. 9.

Tramps, Arrest.—Any constable or special constable, upon view of any tramp found by him roving about from place to place begging or maliciously injuring any person, or carrying any fire arms or other dangerous weapon, or on speedy information of any such offence may, without warrant, apprehend the offender and take him before any competent authority for examination and on his conviction shall be entitled to a reward of five dollars therefor to be paid by the state. C. 281, S. 33.

Writ and Processes, Service.—Town sergeants and constables shall serve and execute, in any town of the county to which they belong, all writs, summons and other processes to them directed and which by law may or ought to be served and executed by town sergeants and constables unless otherwise specially provided. C. 232, S. 3.

Every town sergeant and constable, in the due execution of his

office, may command all necessary aid and assistance in the execution of his said office. *Ibid.*, S. 5.

Constables, Special.—Every town council may elect for such time, not exceeding one year, as they may determine, one or more special constables, who shall be commissioned and engaged, but shall not be required to give bond. C. 40, S. 32.

Birds, Protection.—Every town council shall, annually in the month of April, appoint not less than one nor more than four, suitable persons as special constables, who shall be sworn to the faithful discharge of their duty, and who shall prosecute every person violating the provisions of this chapter, and such special constables so appointed and sworn, shall not be required to give recognizance for costs upon making or in the prosecution of complaints under the provisions hereof. C. 112, S. 16.

Dogs, Appraisers.—The town council of each town may appoint annually in April special constables to perform certain duties prescribed in this chapter; and they shall annually in April appoint one or more suitable persons to appraise the damage that may be done to any owner of animals or fowls suffering loss by reason of the biting, maiming, or killing thereof by any dog or dogs, and to give a statement thereof in writing to the owner suffering such loss. C. 111, SS. 12, 15, 16.

Dogs, List of Owners.—The town sergeant of each town, or such special constables as the town council of such town may appoint annually in the month of April, shall ascertain and make a list of the owners or keepers of dogs in such town and return such list to the town clerk on or before the last day of May, and shall receive from the town treasury the sum of twenty cents for each dog so listed; and the town clerk shall, within two weeks thereafter, furnish to the town sergeant or to each special constable so appointed and sworn, a list of all dogs licensed for the current year and a list of those not licensed, with the names of the owners or keepers thereof. C. 111, S. 12.

Dogs not Licensed, to Kill.—Any person may, and every such special constable so appointed and police officer and constable shall, kill or destroy or cause to be killed or destroyed, all dogs going at large and not licensed and collared according to law; and for each dog so killed, destroyed and buried, such special constable shall be entitled to receive from the town or city treasurer the sum of two dollars. *Ibid.*, S. 13.

The statute gives no authority to enter upon a private close in order to carry out its purposes.—*M'Auliffe v. Gash*, 17 R. I. 355.

Enforce Liquor Law.—The town councils of the several towns shall appoint special constables to enforce the laws of the state prohibiting, restraining or in any manner regulating the sale of intoxicating liquors.

Special constables appointed under the provisions of the preceding section shall have the like power and authority within their respective

towns as conferred in such cases upon the state police and upon the chiefs of police of the several cities. C. 102, SS. 15, 16.

Town councils may appoint constables or other proper officers at the expense of the person licensed by them to give or promote shows and exhibitions, to attend, to preserve order, and to execute the orders of said council at any such exhibition or performance. C. 103, S. 3.

Tramp Officers.—The town councils shall appoint constables for their respective towns, who shall arrest and prosecute all tramps in their respective towns. C. 281, S. 35.

Such special constable shall upon request of any citizen and upon being tendered the sum of thirty cents for each hour of service required, attend any school or meeting lawfully assembled for the purpose of preventing any interruption or disturbance therein, and may arrest without warrant and detain not exceeding six hours any person found by him wilfully interrupting or disturbing such school or meeting, and, like other constables, may command all necessary aid in executing the duties of his office.

He shall have and exercise like powers upon request of any railroad or steamboat company or any proper officer or agent thereof, at or about any regular steamboat landing or railroad passenger station, to preserve order, and prevent the obstruction, annoyance, and inconvenience of the common and public travel. *Ibid.*, S. 33.

CORDERS OF WOOD.

One or more corders of wood are chosen annually at the annual town meeting. Their fees are fixed by law and are paid by the purchasers of the wood which they measure. C. 39, S. 1; C. 149, S. 2.

CORONERS.

Town councils elect suitable persons to act as coroners for their respective towns, to hold the office for three years and until others are elected and qualified. C. 287, S. 10.

They have exclusive jurisdiction in their towns. *Ibid.*, S. 11.

COTTON WEIGHERS.

Weighers of cotton may be elected annually by town councils of the several towns. C. 140, S. 1.

All cotton sold in the state unless otherwise specially agreed shall be weighed by the weighers so chosen.

It is their duty to weigh correctly and record in a book to be kept for that purpose the weight of each bale of cotton with the marks and numbers of the bales, and mark upon every bale in plain figures the

weight of the same and make a certificate of each lot of cotton specifying the marks, numbers, and weight of each bale.

Such certificate shall be given to the seller, who shall pay the weighers' fees which are fixed by law. *Ibid.*, SS. 2-4.

FENCE VIEWERS.

Fence viewers are chosen annually at the annual town meeting. C. 39, S. 1.

The services of a fence viewer may be obtained upon the application of any aggrieved party in case any owner, or possessor of land neglects or refuses to repair, build, or rebuild any partition fence, or withdraws his fence from any division line. The fence viewer upon notice to the offender, examines into the grounds of the complaint, and, if he finds it to be true, orders the delinquent party to repair, build, or rebuild the fence, within such time as he may appoint, not exceeding fifteen days.

If the order be not complied with the complainant may build, repair, or rebuild the fence, and when it is completed to the satisfaction of the fence viewer, that officer ascertains the cost of the fence, and gives a certificate of the same to the complainant, who may recover of the delinquent double the amount certified and interest at the rate of twelve per cent. per annum.

In cases of dispute as to the rights of adjoining owners of lands in division lines or partition fences and their obligations to maintain the same, either party may apply to a fence viewer of the town where the lands lie, who, upon notice to the parties, attends and views the premises, and may in writing determine the proper division line, and assign to each of the parties his part of the partition fence. This finding upon being recorded in the town clerk's office, is binding upon the parties and all succeeding owners and occupants of the land. C. 126, SS. 5, 6, 8.

FIELD-DRIVERS.

Town councils may appoint one or more field-drivers for their respective towns, with the same power to impound animals as the freeholders and qualified voters of the towns have. C. 40, S. 6.

Any field-driver may take up any horse, neat beast, sheep, or hog, going at large in any highway, or common, or on any land thrown open as a way for public travel, and used by the public for travel, and impound such estray in one of the public pounds of the town. C. 128, S. 1.

FIRE MARSHALS.

The town councils of the several towns may elect an officer to be known as fire marshal, who shall reside in the said town, and be qualified by taking the oath prescribed, and who shall hold such office during the

pleasure of the town council and until a successor shall be appointed and duly qualified. C. 109, S. 9.

GAUGERS OF CASKS.

Gaugers of casks are chosen annually at the annual town meeting. C. 39, S. 1.

Their fees and the methods of performing their duties are fixed by statute. The rule called "Gauging by Gunter," and the principles laid down in the work of Daniel Anthony, published in Providence in 1817, are prescribed for their guidance. C. 168, SS. 1, 2.

GRAIN AND SALT MEASURERS.

The towns of Bristol, Warren, Warwick, East Greenwich and North Kingstown shall, and any other town may, at any annual meeting for the choice of town officers, elect not exceeding two persons to be measurers of grain and salt. C. 139, S. 1.

Measurers may appoint as many deputies and employ as many assistants as they may deem expedient, who shall be engaged to the faithful performance of their duties. *Ibid.*, S. 2.

They are required to measure or cause to be measured in their presence and to certify the measure of all corn, rye, oats, barley and other grain and salt imported into their town from without the limits of the state which shall be sold and delivered from any vessel, or watercraft, or any railroad car in such town, in any quantity exceeding twenty-five bushels at one sale, to one person or company.

Their fees are fixed by law and are payable by the vendor upon the tender of the measurer's certificate. *Ibid.*, SS. 3, 5.

HEALTH BOARDS.

See "Town Council."

HIDES AND LEATHER INSPECTORS.

There may be elected annually by the town councils of the several towns, an officer to be denominated, "inspector of hides and leather," who shall be sworn to the faithful discharge of his duties. C. 132, S. 1.

HIGHWAY SURVEYORS.

A highway surveyor is elected annually for each highway district, by the town council, who fix his compensation, and may remove him at any time at their pleasure. Unless previously removed, he holds the office until the next annual financial town meeting of the town and until his successor is elected. C. 72, S. 2.

Towns may in town meeting elect so many surveyors of highways and for such districts as they please, and the town councils cannot assign them to other districts than those for which the surveyors were chosen.—*State v. Gorman*, 13 R. I. 318.

Compensation; Penalty for Neglect of Duty.—Surveyors of highways shall be paid out of the town treasury at the rate of two dollars per day for all the time necessarily spent in the discharge of the duties of their office whenever no other mode or amount of compensation shall have been provided by any town or town council. C. 72, S. 25.

Every surveyor of highways who shall neglect the duties of his trust shall forfeit twenty dollars for every neglect, to be recovered in the name of the town treasurer to the use of the town. *Ibid.*, S. 26.

Curb Stones, Cost Assessed.—The costs of curb stones, set against lands of abutting owners shall be ascertained by the surveyor of highways, and be by him submitted to and approved by the town council, and then the surveyor of highways shall demand the same of such abutting owner, and if such owner shall neglect or refuse to pay the same, such surveyor of highways shall certify the costs, so ascertained and approved, to the assessors of taxes for said town, and the assessors shall include the said costs of said curb stones, in the next assessment of taxes for such town against such land or the owner thereof. *Ibid.*, S. 31.

Duties.—Every surveyor of highways shall execute the directions given him by the town council or a committee thereof. This restriction applies to the trimming or removal of trees so planted or maintained by any adjacent owner or occupant upon or near the side of any highways as not to incommode the traveled path, and to the taking of materials for repairing any highway from adjoining land, which acts shall not be done without the consent of the town council or a committee thereof having care and direction of his district. *Ibid.*, SS. 7, 8, 9.

In opening a new highway the town sergeant or surveyor may remove growing trees or brushwood from the space appropriated to the highway but has no right to use them as materials in building or amending the roadway. If he uses them he becomes a trespasser.—*Tucker v. Eldred*, 6 R. I. 404.

The requirement of notice applies to obstructions by snow and ice produced by artificial as well as natural causes.—*Winsor v. Tripp*, 12 R. I. 454.

An abutting owner is not entitled to compensation for the establishment or working of a grade when none existed before.—*Aldrich v. Board of Aldermen*, 12 R. I. 241; *O'Donnell v. White*, 24 R. I. 483.

Impound Stray Beasts.—Every surveyor of highways of the town in which any horse, neat-beast, sheep, or hog shall be going at large in any highway or common, or on any land open as a way for public travel and used for travel, shall take up such animal and impound the same in one of the public pounds of the town; and may appoint in writing a deputy or deputies for that purpose, filing in the office of the town clerk a copy of such appointment. C. 128, S. 1.

Neither the city nor the surveyor of highways is liable for consequential damages to an abutting owner incident to the excavation of a public highway for the purpose of lowering the grade.—*Rounds v. Mumford*, 2 R. I. 154; *Williams v. Tripp*, 11 R. I. 447.

A town council may appoint a committee to grade, curb and construct gutters in an old road and rebuild a bridge without infringement of the rights and duties of a surveyor of highways.—*State v. White*, 16 R. I. 591.

A town is liable for damages sustained by one who falls on the ice in a public highway, when it appears that a defect in the way was partly responsible for the injury.—*M'Closkey v. Moies*, 19 R. I. 300; *Sauthof v. Granger*, *Ibid.* 606.

Materials, May Obtain.—Any surveyor of highways may, with the consent of the town council or committee thereof having care and direction of his district, for the purpose of obtaining materials for repairing any highway, enter upon and dig for stone, gravel, clay, marl, sand, or earth in any adjoining land not forming a part of the messuage connected with any dwelling-house, or not used as a cemetery or burial ground or otherwise appropriated to the burial of the dead; and may remove the material thus dug up to such place or places in such highways for the repair and amendment thereof as he shall deem necessary: *Provided*, that land which is platted in house-lots and the plat thereof recorded in the land records of the town where it lies shall not be so entered upon. *Ibid.*, S. 9.

Removal.—In case of the incapacity of any surveyor of highways, or of any tyrannical and unwarrantable exercise by him of the powers of his office, the town council may, after giving him such notice as they may deem reasonable, either suspend or altogether remove him from his office and appoint another in his place. C. 40, S. 12.

The action of a town council in removing a surveyor of highways is final.—*Walsh v. Town Council*, 18 R. I. 88.

A surveyor of highways is merely a ministerial officer of the town council subject to their direction and control.—*Sweet v. Conley*, 20 R. I. 381.

Snow, Removal.—No town shall be liable for any injury to person or property caused by snow or ice obstructing any or any part of the highways therein, unless notice in writing of the existence of the particular obstruction shall have been given to the surveyor of highways within whose district such obstruction shall exist, at least twenty-four hours before the injury was caused, and such town or surveyor shall not thereupon within said time have commenced the removal of such obstruction, or caused any sidewalk which may have been obstructed by ice to be rendered passable by spreading ashes or other like substances thereon. Whenever any highway is blocked up or encumbered with snow, the surveyor shall cause so much thereof to be removed or trod down as to render such highway passable. C. 72, S. 13.

The mere presence of ice, in the absence of notice required by the statute, was not enough to render the city liable, but the gutter must in itself have constituted such a defect as would have rendered the city liable, in the absence of the ice.—*Allen v. Cook*, 21 R. I. 525.

Trees, Trimming by Direction of.—No electric wire, apparatus, pole, bracket, insulator, or other device or appliance for conducting currents of electricity shall be passed through or affixed to any tree useful for

shade or ornamental purposes, nor shall any such tree be cut, trimmed or interfered with, except under the direction and immediate supervision of the surveyor of highways in whose district such tree is located. C. 279, S. 55.

Wall or Fence, not Undermine.— No surveyor of highways shall remove the earth so near to any wall or fence erected upon or without the limits of such highway as to undermine or overthrow the same, unless the same shall be absolutely necessary for the security or convenience of the public; and, in that case, the repairs shall be made under the supervision of the town council, or of some person by them appointed; and the town shall be at the expense of repairing or resetting the wall or fence removed. C. 72, S. 24.

Water-courses.— No surveyor of highways shall cause any water-course in any highway to be so conveyed as to incommode any person's land, house, store, shop, or other building, or to obstruct any person in the prosecution of his business or occupation, without the consent or approbation of the town council of such town, signified in writing to such surveyor. *Ibid.*, S. 15.

A town is bound to exercise supervision over the making of any excavation or obstruction which it authorizes or permits in its highways, or over any of which it has notice made without its authority or permission. Knowledge on the part of the highway surveyor is notice to the town. Notice to the town clerk to be presented to the town council by a person injured through a defect in a public highway conforms to the requirement of the statute.— *Seamons v. Fitts*, 21 R. I. 236.

A municipal corporation is not liable for acts of a highway surveyor not authorized by the town or the town council thereof, and not done in pursuance of any general authority on the part of the surveyor to act for the town in the premises.— *Briggs v. Allen*, 24 R. I. 80; *O'Donnell v. White*, *Ibid.* 483.

Where no previous authority had been given by the town council to a highway surveyor to do work on the highways in his district, the approval of bills incurred by him and payment of them by the town operated to ratify his action.— *Willoughby v. Allen*, 25 R. I. 531.

JURORS.

See "Town Clerk," "Town Council."

JUSTICES OF THE PEACE.

Justices of the peace, in such number as the town may deem proper, are chosen annually at the annual town meeting, to serve for one year. They are commissioned by the governor, and, if not re-elected, may continue to officiate for thirty days after the next annual town meeting of the town. C. 39, S. 5; C. 25, S. 3; Const. Art. X, S. 7.

Libraries, Trustees.— In case any library or funds for the establishment thereof is offered to a town on condition that such library shall be maintained as a free public library, the town council is authorized to accept such gift on behalf of the town.

Whenever a town establishes or becomes possessed of a free public

library, the town council is required to elect a board of trustees of not less than three nor more than seven members. The members serve for three years, and vacancies as they occur are filled by the town or the town council. C. 43, SS. 1, 2.

LUMBER SURVEYORS.

The town councils of all towns, where boards, plank, timber, joist and scantling are imported for sale, shall annually, on or before the first day of March, appoint one or more surveyors and measurers of boards, plank, timber, joist and scantling, who shall be removable at the pleasure of the council, and who shall each be engaged, and give bond, with two sureties, in the sum of five hundred dollars, to the town treasurer, for the faithful discharge of the duties of said office. C. 40, S. 8.

MILITIA.

Armories Provided.—Every town council shall provide for companies within the limits of its town suitable armories or places of deposit for the arms, equipments and equipage furnished to such companies by the state. C. 296, S. 93.

Every town council shall annually in November, transmit to the office of the quartermaster-general a certificate verified by the oath or affirmation of at least two of its members, showing the number of armories in its town, the name of each company occupying the same, the amount actually paid for the rent thereof, and stating whether such council does or does not consider such armory necessary for the use of such company and whether or not the rent charged therefor is fair and reasonable. *Ibid.*, S. 94.

Enrollment; Record.—The town councils shall, whenever required by the commander-in-chief, cause to be prepared an alphabetical list of all persons living in their respective towns between the ages of eighteen years and forty-five years, liable to be enrolled by the laws of the United States, except those by the laws of this state exempted, and shall, within sixty days thereafter, deliver the same to the town clerks of their respective towns, who shall record the same in a book to be kept by them for that purpose, and the persons named in such list shall constitute the enrolled militia. *Ibid.*, S. 1.

Every member of a town council who shall neglect or refuse to perform in due time any of the duties imposed upon him by the provisions of this chapter shall be fined fifty dollars. *Ibid.*, S. 2.

Draft or Levy.—Whenever the commander-in-chief shall order a draft or levy from the enrolled militia directed to the town council, they shall appoint a time and place, and proceed to draft as many of the enrolled militia of the town, or to accept as many volunteers, as is required by the commander-in-chief; and shall forthwith give notice to

the persons so drafted or volunteering, by proper warrant, and make return of such service to the commander-in-chief. *Ibid.*, S. 156.

Calling Out to Suppress Riot.—When it is made to appear to the president of the town council that there is any tumult, riot, mob, or any body of men acting together with intent to commit felony, to offer violence to persons or property, or in any other way to resist the laws of the state by force of arms, or by violence, or any of said acts are threatened, in any county in this state, and that the services of the militia are required, such president shall issue his precept to that effect, properly signed, directed to the commander-in-chief, and in case he cannot be informed, a copy thereof to the commanding officer of the brigade, regiment, battalion or company, making requisition for troops upon either of them, as the case may be, who shall order out his command or a part of the same, to suppress such riot, tumult, or mob, and to prevent the perpetration of any such felony or act of violence. *Ibid.*, S. 159.

MILK INSPECTORS.

The town council of any town may annually elect one or more persons to be inspectors of milk therein, who shall be engaged to the faithful discharge of their duties.

Such inspector shall receive such compensation as the town council may determine. C. 147, SS. 2, 3.

MODERATOR.

Election; Term.—The moderator is chosen at the annual meeting for the election of town officers, to preside in all the town meetings of the year, and until his successor is elected and qualified. C. 38, S. 2.

Duties, General.—In all meetings of the electors or voters in a town or district the moderator, if present, presides.

He has power to manage and regulate the business of each meeting, conforming to law, and to maintain peace and order therein. *Ibid.*, SS. 8, 11.

Disorderly Persons.—If any person shall conduct himself in a disorderly manner in any town or district meeting, the moderator may order him to withdraw from the meeting; and on his refusal, may order the town sergeant, or any constable present, or any other persons, to take him from the meeting and to confine him in some convenient place until the meeting shall be adjourned; and the person so refusing to withdraw shall, for each offence, be fined not exceeding twenty dollars. *Ibid.*, S. 12.

Motions.—The moderator of every town meeting shall on a motion being made and seconded, relative to any business regularly before such meeting, after having heard all the electors entitled to vote thereon who shall be desirous of being heard, cause the votes of the electors present

to be taken thereon. Whenever any question shall be pending in any town meeting involving an expenditure of money, or the incurring of liability by the town, or the disposition of town property, the same shall be taken by ballot, if a ballot be called for and the call be seconded by at least five per centum of the electors qualified to vote on the pending question. C. 38, S. 13.

Votes; Majority.—In all town elections, and on all question to be decided by ballot, the elector voting shall present his ballot to the moderator without his name being written on the back or face of his ballot, and the ballots shall be received by, and the ballot-boxes shall be in charge of, the moderator only; and like proceedings shall be had in such cases and in all town meetings, as far as may be, as are prescribed in sections one, two, eleven, twelve and thirteen of chapter nine.

All questions relating to town affairs, excepting elections, shall be decided by a majority of the votes of the electors present entitled to vote on the question. *Ibid.*, SS. 14, 15.

In Voting-Districts; Quorum; Duties.—At elective meetings in voting-districts, the moderator and clerk, when present, constitute a quorum for opening the polls for voting for civil officers except moderator and clerk. C. 9, S. 3.

The moderator presides at all district meetings, has the same authority to preserve order as moderators of town meetings have, and is subject to the same penalties for wilful violation or neglect of duty. Should the clerk not attend any meeting, the moderator calls for an election of clerk for the time being, and discharges the duties of clerk until such election. *Ibid.*, SS. 8-10.

Election; Term; Vacancy.—Moderators in voting-districts are elected from the qualified voters of their districts, annually, on the day of the annual election of town officers, and the voting for them continues through the whole time limited by law for voting on that day. *Ibid.*, S. 7.

His term of office commences at the first regular district meeting held after his election for the election of officers. *Ibid.*, S. 7.

In case of his death, resignation, or permanent disability, the town or district may proceed to a new election. *Ibid.*, S. 10.

Assistant Moderators.—Towns not divided into voting-districts are authorized to elect an assistant moderator who may preside at town meetings held on the Tuesday next after the first Monday in November, annually, for the election of town officers, and the transaction of town business, and with like power and authority in such town meetings as moderators would have. C. 39, S. 3.

Elections; Duties.—The moderator of any town or district meeting receives the ballots of all persons whose names are upon the list of

voters certified and delivered to him by the town clerk, and rejects the ballots of all persons attempting to vote whose names are not on said list. P. L., C. 829, S. 3.

Every voter at the time of voting announces his name to the moderator who thereupon pronounces the same aloud and causes it to be checked upon the voting-list by the clerk before the voter deposits his ballot or it enters any voting-machine. *Ibid.*, S. 5.

Ballots Counted.—After the voting is closed, the moderator and clerk separate the different folds of the official ballot by tearing them apart upon the indented or perforated lines, and in open meeting proceed to count the ballots. The moderator announces the results. *Ibid.*, S. 7.

Record.—The moderator and clerk make a record in ink in a book provided for that purpose by the secretary of state:

First, of the date of the meeting; *second*, of the number of names checked upon the voting-list used at the meeting; *third*, of the number of votes cast for each candidate, and for what office; *fourth*, of the number of votes cast for and against any proposition of amendment of the constitution; and *fifth*, of the number of votes cast for and against any question which has been voted upon at the meeting, and sign such record in ink.

The book containing the record so made is kept by the moderator safely, and is delivered by him to the town clerk within twelve hours after the record is made and signed. *Ibid.*, S. 8.

Ballots Sealed Up.—When the counting of the ballots has been completed and the result declared, the moderator and clerk seal up the ballots with a certificate in detail of the time, place and results of the voting, by inclosing them in stout paper and binding the package with suitable cord or twine and affixing thereto adhesive labels, the moderator and clerk affixing their signatures in ink to the labels. Whenever both such officers are of the same political party, they allow some elector of another party to affix his signature in ink to the labels. In towns not divided by voting-districts, the ballots cast for town officers need not be so sealed. *Ibid.*, S. 9.

Packages Addressed.—The packages so sealed up are addressed to the board or council to which they are to be delivered and are plainly indorsed in ink by the clerk of the meeting with the name of the town or the number of the district, the day, month and year of holding the meeting, and the class or classes of ballots which such package contains.

Different classes of ballots are enclosed and sealed up in separate packages; no two classes are placed together; *provided*, that all of the ballots for candidates whose names are printed upon one fold of the official ballot may be sealed up in one package, and that when any one fold of the ballot contains the names of candidates for office and a proposition for amendment and a question, or any two of them, sub-

mitted to the electors of the state, the ballots upon such fold may be all sealed up in one package. *Ibid.*, SS. 10, 11.

Penalties for Fraud or Neglect.—Fraud or neglect on the part of the moderator and clerk in the performance of the duties imposed upon them in the foregoing sections are punished by fine or imprisonment, in the discretion of the court before which the offender may be tried. *Ibid.*, SS. 30, 31.

OVERSEERS OF THE POOR.

Election.—Overseers of the poor are annually chosen at the annual town meeting. In case the town fails to elect overseers, they are chosen by the town council. The number chosen is fixed by the town. C. 39, SS. 1, 13.

Vacancies are filled by the town council. *Ibid.*, S. 20.

Duties.—Every town shall be holden to relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need of relief and support, and to afford temporary relief to other poor and indigent persons. C. 79, S. 1.

The overseers of the poor shall have the care and oversight of all such poor and indigent persons settled in their respective towns.

They shall see that they are suitably relieved, supported and employed, either in the work-house or in other tenements belonging to such towns, or in such other way and manner as the inhabitants of the respective towns at any legal meeting shall direct, or otherwise at the discretion of said overseers. They may also afford temporary relief to other poor and indigent persons, at the cost of the town. *Ibid.*, SS. 2, 3.

A town is bound to relieve and support all persons (poor and indigent) lawfully settled in the town and also to afford temporary relief to persons having no settlement there; but it is not liable to an individual for the expense of such relief furnished by him to such person, without the request of the overseer of the poor, although she became sick and needed relief before the overseers could be applied to.—*Caswell v. Hazard*, 10 R. I. 491.

Bad Fame, Persons, Removal.—Every town council shall, upon the complaint of any overseer of the poor of the town, have discretionary power to order to depart from the town and to remove as aforesaid, all person not settled in the town who are of bad fame and reputation, although such persons shall not at the time of such removal have become or shall not then be likely to become chargeable to such town. C. 80, S. 24.

Bastardy Cases, Appeals.—The overseer of the poor prosecuting a bastardy case shall be entitled to an appeal from the judgment of the district court to the common pleas division on entering into a recognizance to prosecute such appeal with effect, or in default thereof to pay all costs which may accrue on said complaint to the respondent or any other person; and in case said accused shall be acquitted, he shall recover of the overseer of the poor all the costs to which he may have been put by reason of said complaint. C. 81, S. 10.

Jurisdiction of District Court.—Whenever the overseer of the poor of any town shall be the justice, or clerk, or assistant justice of the district court having jurisdiction in such town, every complaint under the provisions of this chapter shall be brought before and heard by the district court in any adjoining district. *Ibid*, S. 17.

Bastards, Security Taken for Support.—In case any unmarried woman is found to be with child or shall have been delivered of a child, the overseer of the poor of the town in which such unmarried woman shall reside or belong may and, upon the payment of such sum or the giving of such security as he shall deem sufficient to indemnify such town for the expenses of the lying-in of such woman and the support of such child and the expenses of the town in that behalf, shall accept such sum or security, whether before or after complaint and suit, and thereupon shall stay all further proceedings in the case. *Ibid.*, S. 1.

Bastards; Warrant for Arrest of Father.—Upon the examination of any unmarried woman, taken before any justice or clerk of a district court in whose jurisdiction she may reside or belong, alleging on oath in writing that she is with child or has been delivered of a child, and naming the father thereof, such justice or clerk, on complaint of the overseer of the poor of such town, may issue a warrant commanding the person she shall charge to be the father of said child to be brought before said district court to be dealt with according to law. *Ibid.*, S. 2.

Bastardy complaints, where the mother has no legal residence in the state, may be brought by an overseer of the poor, or by the superintendent of state charities.—*State v. Hussey*, 12 R. I. 477.

Burial of Pauper.—Whenever a pauper shall die in a town of which he is not an inhabitant, the overseers of the poor thereof shall give him a decent burial, the reasonable expense whereof shall be paid by the town to which such pauper belonged. C. 79, S. 24.

Children of Paupers, Bind Out.—The overseers of the poor of the several towns, with the advice and consent of the town councils thereof, may bind out as apprentices, to citizens of this State or to the Providence Children's Friend Society, or to the Home for Friendless Children in Newport, or to the Providence Shelter for Colored Children, in the manner and for the purposes prescribed by law, the following classes of poor children in their respective towns:—

First. Any children whose parents are lawfully settled in and have become chargeable to their town;

Second. Any, whose parents, so settled, shall be found by said overseers to be unable to maintain them, whether they receive alms or are so chargeable or not;

Third. Any, whose parents, residing in their town, are supported there at the charge of the state;

Fourth. Any, whose parent or parents having no legal settlement in

this state, are residing in such town and are adjudged by the town council of such town to be unable to maintain his or her children, and who are unwilling themselves to bind out their children;

Fifth. Any, not having sufficient estate for their maintenance and no visible means of support, who have no parents living or residing in the town, and who have no legal settlement in this state. C. 79, S. 14.

Children of the same classes may be apprenticed also to citizens of Massachusetts and Connecticut, or to any incorporated institution for the care of children of this or either of those states, to be instructed, disciplined and dealt with according to the powers and rules of said societies, until they become of age or are married. C. 198, S. 5.

State Home and School.—It shall be the duty of the superintendents or overseers of the poor in the several towns to bring before the courts of probate of such towns for examination, children supported in poor-houses or otherwise dependent on the public for support, or other children found to be in a state of vagrancy, want, or suffering, or abandoned by their parents or guardians, or not having any home or settled abode or proper guardianship; and thereupon it shall be the duty of the court of probate before whom any such child is brought, to investigate the facts. And if on such examination the court shall find that such child is so supported or dependent, or is in a state of vagrancy, want, and suffering, or is so abandoned, or without home or settled abode or proper guardianship, it shall make a proper order containing a statement of the facts ascertained as to said child, and entrusting said child to the care and custody of the said board together with a direction to the superintendent or overseer of the poor to take said child to the state home and school, and shall deliver to the superintendent or overseer of the poor, or other person procuring such examination, a certified copy thereof. Such certified copy of such order shall then be delivered with the child at the home and school to the presiding officer thereof. All expenses attending the foregoing proceedings shall be paid by the town or city in which the child belongs. C. 87, S. 9.

Drunkards, Beggars and Others.—The overseers of the poor of any town, may make complaint against any person for any of the offences mentioned in section 24 of this chapter. C. 281, S. 25.

Kindred, Duties, How Enforced.—The kindred of any such poor person, if any he shall have, in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, or children by adoption, living within this state and of sufficient ability, shall be holden to support such pauper in proportion to such ability.

The common pleas division of the supreme court, at any session thereof in any county where any such kindred to be charged shall reside, upon the petition of the overseer of the poor of any town who shall have been at any expense for the relief and support of any such pauper, may

on due hearing, either upon the appearance or default of the kindred, they being summoned as hereinafter prescribed, assess and apportion such sum as they shall judge reasonable therefor, upon such of said kindred as they shall judge to be of sufficient ability, and according thereto, to the time of such assessment, with costs, and may enforce payment thereof by warrant of distress. C. 79, SS. 5, 6.

The said overseer of the poor of any town shall apply to the clerk of said common pleas division for, and said clerk shall thereupon issue, a citation substantially in the form of the citation prescribed in section fifteen of chapter forty-six; and said citation shall contain the names of the said kindred, and said citation and petition shall in all respects follow the procedure, and be subject to the jurisdiction, prescribed in section sixteen of said chapter forty-six.

Such assessment shall not extend to any expense for any relief afforded more than six months previous to the filing of the petition.

Said court may further assess and apportion upon such kindred such weekly sums for the future as they shall judge sufficient for the support of said pauper, to be paid quarterly into the clerk's office of said court, to the use of the overseer, until further order of the court; and upon application from time to time of such overseer, the clerk of the court shall issue and may renew a warrant of distress for the arrears of any preceding quarter.

Upon suggestion made, other kindred, of ability, not named in the citation, may be notified, and the process may be continued; and upon due notice, whether they appear or are defaulted, the court may proceed against them in the same manner as if they had been named in the citation. *Ibid.*, SS. 7, 8, 9, 11.

Paupers, Absent.—Whenever the overseers of the poor of any town in which a pauper belonging to another town shall become chargeable, shall give notice of his condition to the overseer of the poor of the town to which the pauper belongs, and no provision shall be made for his removal or maintenance within three days after receiving said notice, then such town shall pay all reasonable charges for the maintenance and support of such pauper. C. 80, S. 28.

C. 79, §§ 18–23, providing for the appointment of a commission to determine whether a town is negligent in caring for its paupers is unconstitutional as in violation of the fourteenth amendment to the Constitution of the United States. — *Church v. So. Kingston*, 22 R. I. 381.

Pauper Settlements, Rules.—A legal settlement in any town shall be gained, so as to oblige such town to relieve and support the person gaining the same in case he becomes poor and stands in need of relief, by any of the ways and means following and not otherwise:

First. A married woman shall always follow and have the settlement of her husband, if he has any settlement in this state or in any other of the United States; but if he has no settlement in this state or in any

other of the United States, the wife shall have and retain her settlement at the time of her marriage, and the husband in such case shall follow and have the settlement of his wife.

Second. Legitimate children shall follow and have the settlement of their father until they arrive at the age of twenty-one years, if the father shall, before that time, have any settlement in this state or in any other of the United States, and shall retain such settlement until they gain a settlement of their own; but if the father, before that time, shall not have any settlement in this state or in any other of the United States, the children shall in like manner follow and have the settlement of the mother.

Third. Illegitimate children born in this state shall follow and have the settlement of their mother at the time of their birth; but neither legitimate nor illegitimate children shall gain a settlement by birth in the places where they may be born, if neither of their parents shall have a settlement there.

Fourth. Every minor who shall serve an apprenticeship to any lawful trade for the space of three years in any town, and actually set up the same therein within three years after the expiration of the said term, being then twenty-one years of age, and shall continue to carry on the same for the space of five years, shall thereby gain a settlement in such town; but such person being hired as a journeyman, shall not be considered as setting up a trade.

Fifth. Every person of twenty-one years of age, having an estate of inheritance or freehold, in the town where he shall dwell and have his home, of the yearly income of twenty dollars over and above the interest of any mortgage which shall be thereon, and taking the rents and profits thereof for three years successively, whether he live thereupon or not, shall thereby gain a settlement therein.

Sixth. Every person of twenty-one years of age, having real estate which shall be of the value of two hundred dollars over and above any mortgage of encumbrance which may be thereon, and being assessed for the same in the state and town taxes, and actually paying the same for five years successively in the town where he dwells and has his home, shall thereby gain a settlement therein. C. 78, S. 1.

Every legal settlement, when gained, shall continue until lost or defeated by gaining a new one; and upon gaining such new settlement all former settlements shall be defeated and lost. *Ibid.*, S. 2.

One born in 1797 in a town in this state, although the child of a father who had been a slave, had a settlement in the place of her birth.

Exeter v. Warwick, 1 R. I. 63, gives a historical sketch of the early law of settlements.

The settlement of the child follows that of the father.—*Exeter v. W. Greenwich*, *Ibid.* 70.

A wife follows the settlement of her husband, if he has one in this state or in any of the United States, and if not, retains the settlement she had at the time of her marriage.—*W. Greenwich v. Warwick*, 4 R. I. 136.

Legitimate children, though idiots, have the settlement of their father until they attain the age of twenty-one years, and until they gain a settlement of their own.—*Gloucester v. Smithfield*, 2 R. I. 30.

By marriage a woman lost her settlement in this state, gaining that of her husband in Connecticut, and on returning to this state did not regain her settlement here.—*Exeter v. Richmond*, 6 R. I. 149.

A pauper retains the settlement of his father until he gains one of his own.—*Paine v. Town Council of Smithfield*, 10 R. I. 446.

An equitable estate of inheritance or freehold gives a legal settlement just as a legal estate would give it.—*Smith v. Angell*, 14 R. I. 192.

Paupers not Settled.—If any person shall reside in any town in the state, not being legally settled therein, and shall become, or be likely to become chargeable to such town, any one of the overseers of the poor of such town may make complaint thereof to the town council.

In case such overseer shall judge it necessary that an order should be made sooner than the town council are likely to meet of course, he shall give a notification to the town sergeant to notify the town council to meet at a time and place therein named, who, upon such notification, shall meet accordingly. C. 80, SS. 11, 12.

Pauper Removals; Penalty; Appeals.—The order of the town council for the removal of a pauper shall be directed to the sergeant or one of the constables of the town, who shall proceed forthwith to remove such person and such of his family, if any he have, as by law ought to be removed with him, to the town or place to which he is adjudged by such order to belong and there deliver him to one of the overseers of the poor of such town, and leave an attested copy of the order with the overseer. *Ibid.*, S. 14.

If such overseer shall refuse to accept such poor person, he shall forfeit fifty dollars, to be recovered in an action of debt by the town treasurer of the town from which such poor person was sent, to the use of such town.

If the overseer of the poor of the town to which such poor person shall be removed as aforesaid shall think his town aggrieved at the determination and order of the town council for the removal of such person, he may in behalf of his town appeal therefrom to the supreme court, proceeding according to the provisions of chapter two hundred forty-eight with reference to appeals from town councils, within forty days after the delivery to him of such poor person and the leaving with him of an attested copy of such order, in the county in which the town from which such poor person was removed is situated. *Ibid.*, SS. 15, 16.

An appeal lies by an overseer of the poor of a town from an order of removal by a town council, removing a poor person to the town of which he is an overseer, if such appeal is taken to the Supreme Court holden next after twenty days from the time of relieving such person, and after an attested copy of the order of removal has been left with him. Such appeal need not be claimed within forty days after making the order.—*Park v. No. Providence*, 9 R. I. 358.

Second Removal.—Eight days' notice of the intention of such second removal shall be previously given through the post-office, by the overseer

of the poor of the town where such pauper shall be, to the overseer of the poor of the town in which such person shall be legally settled, for the purpose of giving such town an opportunity to remove such person in its own manner at its own proper expense. *Ibid.*, S. 23.

PACKERS OF FISH.

One or more packers of fish are chosen annually at the annual town meeting. C. 39, S. 1.

PAUPERS.

See "Overseers of the Poor."

PETROLEUM INSPECTORS.

The town councils of the several towns shall appoint annually one or more inspectors of petroleum oil, kerosene, and coal oil, their products, compounds, and components, and may limit and prescribe by ordinance the place or places and manner of storing or safe keeping and the quantity to be stored in any one place and of sale within their respective towns of said articles and other like explosive substances, and may inflict fines and penalties for the violation of such ordinances not exceeding for one offence two hundred dollars fine and six months imprisonment.

In case of a vacancy in the office the same shall be filled as soon as may be by the town council by a new election. C. 144, S. 9.

POLICE.

See "Town Council."

POLICE CONSTABLES.

The town councils of the several towns may elect such number of police constables for their respective towns as they may deem expedient, who shall not be required to give bond, nor shall they be authorized to serve process in civil actions; but in all other matters they shall have the same power and authority as other constables. They shall continue in office during the pleasure of the council, but not more than ten days after the expiration of the political year for which such town council was elected. C. 40, S. 34.

Police officers are appointed for a public service, and in appointing them a city merely exercises one of the functions of government, acting for the state. The act (P. L. c. 804, 1900) establishing a board of police commissioners for the city of Newport is not unconstitutional.

Sketch of the early history of the first four towns — *Newport v. Horton*, 22 R. I. 196; *Kelley v. Cook*, 21 R. I. 29.

The chief of police of the town of East Providence was not a mere police constable but his tenure of office was that of town officers; and he could not be removed except for cause and only after charges properly made against him and a trial had thereon. — *Norton v. Adams*, 24 R. I. 97.

The appointment and removal of subordinate officers in the administration of town government must of necessity be left to local authority. The powers conferred upon town councils concerning paid police officers is not controlled by General Laws, chap. 248, relating to appeals.—*Donahue v. Town Council, of Cumberland*, 25 R. I. 81.

POUND KEEPER.

Every town is obliged by law to maintain at its own charge one or more public pounds for the impounding and securing of animals found going at large in the public ways and commons, and for neglect so to do forfeits the sum of thirty dollars. C. 127.

Every town is required to elect annually, at the annual meeting, one or more pound-keepers. C. 37, S. 1.

Duties, General.—It is the duty of the pound-keeper to receive, keep, and feed any animal impounded, and he shall and may duly milk any cow so impounded, for his own use. C. 128, S. 4.

Charges Paid by Owner.—The owner of the impounded animal is required to pay the charges for its keep and the penalties prescribed by law, of which the pound-keeper pays one-half to the town treasurer and the other half to the person who impounded the animal. *Ibid.*, S. 5.

Disposal of Animal.—After the animal has been impounded for forty-eight hours, the pound-keeper is required to post notifications containing a description of the animal in three public places in the town.

If no owner appears within five days from the date of the notification, and pays the penalty and charges, it is the duty of the pound-keeper to deliver the animal to the town treasurer with a written statement of his proceedings and of the charges and expenses. *Ibid.*, SS. 7, 8.

PROBATE COURT.

See "Town Council."

PUBLIC SCHOOLS.

See "Schools."

SALERATUS, ETC., INSPECTOR.

The town councils of the several towns may appoint an inspector of saleratus, bi-carbonate of soda and cream of tartar, for each of their respective towns. C. 40, S. 7.

SCHOOLS.

Towns to Maintain.—Every town shall establish and maintain, with or without forming districts, a sufficient number of public schools, at convenient places, under the management of the school committee, subject to the supervision of the commissioner of public schools. C. 54, S. 1.

Evening Schools, Support.—There shall be an annual appropriation for the support and maintenance of evening schools in the several towns.

of this state, under the general supervision of the state board of education, who shall apportion said appropriation annually among the several towns and draw orders therefor on the general treasurer. C. 53, S. 10.

State Aid.—The sum of one hundred and twenty thousand dollars shall be annually paid out of the income of the permanent school fund and from other money in the treasury, for the support of public schools in the several towns, on the order of the commissioner of public schools. *Ibid.*, S. 1.

This sum shall be apportioned by the commissioner of public schools among the several towns, as follows: The sum of one hundred dollars for each school not to exceed fifteen in number in any one town; the remainder in proportion to the number of children from five to fifteen years of age inclusive, in the several towns, according to the school census then last preceding. *Ibid.*, S. 2.

Conditions.—No town shall receive any part of such state appropriation, unless it shall raise by tax, for the support of public schools, a sum equal to the amount it may receive from the treasury for the support of public schools. *Ibid.*, S. 4.

Forfeiture.—If any town shall neglect or refuse to raise or appropriate the sum required in the preceding section, on or before the first day of July, in any year, its proportion of the public money shall be forfeited, and the general treasurer, on being informed thereof in writing by the commissioner of public schools, shall add it to the permanent school fund. *Ibid.*, S. 5.

Payments.—The commissioner of public schools shall draw orders on the general treasurer for their proportion of the appropriation for public schools, in favor of all such towns as shall on or before the first day of July annually comply with the conditions of section four of this chapter. *Ibid.*, S. 6.

Reference Books.—The sum of four thousand dollars shall be annually appropriated for the purchase of dictionaries, encyclopedias and other works of reference, maps, globes and other apparatus, for the use of the public schools of the state.

Said sum of four thousand dollars shall be apportioned among the several towns and districts as follows: Every town or district desiring to avail itself of this appropriation shall make application therefor to the commissioner of public schools, stating the amount that has been raised or appropriated for the same purpose by the town or district. Upon the receipt of said application and vouchers for the amount actually expended, the commissioner of public schools may draw his order on the general treasurer in favor of said applicant for half of the amount of said vouchers, to an amount not to exceed twenty dollars in

any one year, in favor of any district, or, in case of any town not divided into districts, at the rate of not more than ten dollars for each school, to an amount not to exceed two hundred dollars in any one year: *Provided*, that the gross amount in any one fiscal year shall not exceed four thousand dollars.

In case the number and amount of applications in any one fiscal year shall exceed the limit of the appropriation, the commissioner of public schools shall record the date of each application, and in the apportionment for the following year such recorded applications shall have the preference in the order of their dates. *Ibid.*, SS. 7, 8, 9.

Consolidation of Schools.—In case any town shall consolidate three or more ungraded schools, and instead thereof shall establish and maintain a graded school of two or more departments with an “average number belonging” of not less than twenty pupils for each department, the state shall pay to such town one hundred dollars annually for each department of said schools towards the support thereof. Two or more towns may unite in the establishment and maintenance of such graded school, and in such cases the money paid by the state towards the support thereof shall be divided between the towns thus maintaining said school according to the number of pupils contributed by each town to the whole “average number belonging.” P. L., C. 544, S. 1.

In case of the consolidation of any district maintaining an ungraded school with another district maintaining a graded school there shall be paid by the state to the town in which the districts are situated, on account of the latter district, the sum of one hundred dollars annually for each district so consolidated, the same to be used for the support of the aforesaid graded school, or for the transportation of pupils as provided for by section 8 of this chapter. *Ibid.*, S. 2.

High Schools.—Any town maintaining a high school having a course of study approved by the state board of education, and in the town of New Shoreham any consolidated district provided for in section 1 of chapter 57 of the General Laws, shall be entitled to receive annually from the state twenty dollars for each pupil in average attendance for the first twenty-five pupils, and ten dollars for each pupil in average attendance for the second twenty-five pupils. Any town not maintaining a high school, which shall make provision for the free attendance of its children at some high school or academy approved by the state board of education, shall be entitled to receive aid from the state for each pupil in such attendance upon the same basis and to the same extent as if it maintained a high school by itself. *Ibid.*, S. 3.

Applications to Commissioner.—All applications for aid under this act shall be made to the commissioner of public schools by the school committee of the town; and said application must be accompanied

by the certificate of the principal teacher of the school on account of which the application is made, setting forth the facts relating to the attendance which is made the basis of the application. P. L. C. 544, S. 4.

Non-Forfeiture of Aid.—After any school, such as is provided for in section 1 of this chapter, has been established it shall not forfeit its claim to its share of the state aid for a failure to maintain the required “average number belonging” unless said “average number belonging” falls below fifteen for the several departments. *Ibid.*, S. 5.

Annual Amount.—The sum of twenty thousand dollars, or so much thereof as may be needed, shall be annually appropriated for the payment of the sums which may become due and payable under the provisions of this chapter; and the state auditor is authorized and directed to draw his orders on the general treasurer in favor of such towns for such sums as shall be certified to him by the commissioner of public schools as due to said towns under the provisions of this chapter. *Ibid.*, S. 6.

No Forfeiture of Allotment.—In the apportionment of the annual appropriation of the one hundred and twenty thousand dollars provided by law for the support of public schools, no town shall forfeit any portion thereof hereafter on account of any reduction in the number of its schools, by reason of the consolidation thereof in accordance with the provisions of this act, but each town shall continue to be entitled to the same amount from said annual appropriation upon the basis of the number of schools prior to such consolidation. *Ibid.*, S. 7.

Teachers' Money.—The money appropriated from the state is denominated “teachers' money,” and is applied to the wages of teachers. C. 53, S. 3.

SCHOOL COMMITTEE.

Election; Vacancies.—The school committee of each town consists of three residents of the town or of such number as at the present time constitute the committee, divided as equally as may be into three classes, whose several terms of office expire at the end of three years from the dates of their respective elections; and in the case of the first election of a school committee under this chapter, the terms of office of the three classes are respectively one year, two years and three years; the classes and their terms of office to be determined by lot by the committee at their first meeting after their election. As the office of each class becomes vacant, such vacancy or vacancies are filled by the town at its annual town meeting for the election of state or town officers, or by the town council at its next meeting thereafter. In case of a vacancy by death, resignation, or otherwise than as is above provided, such vacancy is filled by the town council until the next annual town meeting for state or town officers, when it shall be filled for the unexpired term thereof as is above provided. C. 54, S. 7.

Census.—The school committee of each town, or some person or persons whom they shall appoint for the purpose, shall annually in the month of January take a census of all persons between the ages of five and fifteen years, inclusive, residing within the limits of their respective towns on the first day of said January; and said school committee shall fix the compensation for the above service, which shall be payable from the appropriation for public schools. *Ibid.*, S. 13.

Consolidation of Schools.—The school committee of any town may, subject to the approval of the commissioner of public schools, consolidate any schools the average number belonging to each of which is less than twelve, or may unite such school or schools with some other school in order to establish a graded school or to secure greater efficiency of the schools; and said school committee shall have authority to provide, in their discretion, transportation for pupils to and from school. P. L., C. 743; S. 1.

Flag, United States, Display of.—The school committees of the several towns of the state shall, in the same manner as now provided by law for the purchase of supplies for public schools by such committees, purchase for every such school in their respective towns not now provided therewith, a United States flag, flag-staff, and the necessary appliances therefor; and thereafter whenever the flag, flag-staff, or the necessary appliances therefor of any such school shall from any cause become unsuitable for further use, such school committee shall in the same manner purchase others in place thereof.

The school committees of the several towns shall cause the United States flag to be displayed upon the public school buildings or premises therein during school hours if in their best judgment it be practicable, otherwise at such times as they may direct, and such committees shall also establish rules and regulations for the proper care, custody, and display of the flag; and when, for any cause, it is not displayed it shall be placed conspicuously in the principal room of the school building.

Flag Day.—The twelfth day of February in each and every year hereafter is hereby established in the annual school calendar to be known as Grand Army Flag Day, in honor of the birthday of Abraham Lincoln, and shall be observed with patriotic exercises in the public schools; but such day shall in nowise be construed to be a holiday. It is also provided that when such day shall fall on Sunday or on Saturday, the following or preceding days respectively, as the case may be, shall be observed.

It shall be the duty of the commissioner of public schools to prepare a programme of patriotic exercises for the proper observance of Grand Army Flag Day, and to furnish printed copies of the same to the school committees of the several towns at least four weeks previous to the twelfth day of February in each year. He shall also prepare for the use

of the schools a printed programme providing for a uniform salute to the flag, to be used daily during the session of the school. P. L., C. 818, SS. 1-4.

Officers; Meetings.—The school committee of each town shall choose a chairman and clerk, either of whom may sign any orders or official papers, and may be removed at the pleasure of said committee.

They shall hold at least four regular meetings in every year, at such time and place within the town as the committee shall by general order fix and determine. C. 60, SS. 1, 2.

Physiology and Hygiene, Instruction in.—The school committees of the several towns shall provide for instruction of the pupils in all schools supported wholly, or in part, by public money in physiology and hygiene with special reference to the effects of alcoholic liquors, stimulants and narcotics upon the human system. *Ibid.*, S. 7.

Report to School Commissioner.—The school committee shall prepare and submit annually to the commissioner of public schools, on or before the first day of July, a report in manner and form by him prescribed; and until such report is made to the commissioner, he may refuse to draw his order for the money in the state treasury belonging to such town: *Provided*, that the necessary blank for said report has been furnished by the commissioner on or before the first day of May next preceding; they shall also prepare and submit annually, at the annual town meeting, a report to the town, setting forth their doings, the state and condition of the schools and plans for their improvement, which report, unless printed, shall be read in open town meeting; and if printed, at least three copies shall be transmitted to the commissioner on or before the first day of July in each year. *Ibid.*, S. 20.

School Houses.—The school committee shall locate all school-houses, and shall not abandon or change the location of any without good cause. *Ibid.*, S. 4.

Teachers Examined; Visit the Schools.—The school committee may examine or cause to be examined applicants for situations as teachers, and annul the certificates of such as they deem unqualified, or who do not conform to the regulations of the committee.

They shall visit, by one or more of their number, every public school in the town at least twice during each term, once within two weeks of its opening, and once within two weeks of its close, and examine the register and matters touching the school-house, books, discipline and modes of teaching. *Ibid.*, SS. 8, 9.

Text-Books and Supplies.—The school committee of every town shall purchase, at the expense of the town, text-books and other school supplies used in the public schools; and said text-books and supplies shall be loaned to the pupils free of charge, subject to such rules and regula-

tions as to care and custody as the committee may prescribe. *Ibid.*, S. 22.

SUPERINTENDENT.

Election.—The school committee of each town shall elect a superintendent of the public schools of the town, to perform, under the advice and direction of the committee, such duties, and to exercise such powers, as the committee shall assign him; and to receive such compensation out of the town appropriation for public schools as the committee shall vote. Said superintendent shall be elected at the first regular meeting of the school committee succeeding the annual election of the school committee; but the committee shall have power to fill a vacancy at any meeting duly called. C. 54, S. 8.

When a town has been divided into school districts neither the town nor the town treasurer is liable to garnishment for a teacher's wages; at least until an order has been given by the school committee in favor of such teacher.—*Spencer v. School Dist.*, 11 R. I. 537.

Under P. L., chap. 666, January, 1867, incorporating Woonsocket, and Gen. Stats. chap. 47, § 5, the town council of W. elects the superintendent of public schools. Only in case of failure by the council to elect, can the school committee appoint that officer.—*Verry v. School Committee*, 12 R. I. 578.

Towns Unite to Employ.—Any two or more towns, the aggregate number of schools in all of which shall not be more than sixty, may by vote of the qualified electors of said several towns unite for the purpose of the employment of a superintendent of schools.

The school committees of the respective towns voting therefor, as prescribed in section 2 hereof, shall form a joint committee, for the purposes of this act; said joint committee shall be the agents of each town comprising such union. Said school committees shall meet annually in joint convention, on the last Friday in June, at a place and hour agreed upon by the chairman of the respective school committees, and shall organize by the choice of a chairman and secretary. They shall choose by ballot a superintendent of schools, fix his salary and apportion the amount thereof to be paid by each of the towns, approximately according to the next preceding school census in said town. Such union shall not be dissolved because the number of schools shall have increased beyond the number of sixty, nor, for any reason, for the period of three years from the date of the formation of such union, except by vote of a majority of the towns constituting such union. P. L., C. 1101, SS. 2, 3.

State Commissioner, Action on Certificate.—Whenever the chairman and secretary of such joint committee shall certify to the commissioner of public schools that a union has been effected as herein provided together with the amount of salary to be paid to the superintendent of schools and the proportional amount to be paid by each town forming said union, then upon the receipt of said certificate by the commissioner of public schools said commissioner shall draw his order

upon the general treasurer in favor of each town in said union for the payment of one-half the proportional amount so certified: *Provided*, the amount paid to any one union shall not exceed seven hundred fifty dollars, which amount shall be paid for the salary of said superintendent. P. L., C. 1147, S. 1.

Towns not United.—In case any town not united with any other town for the purposes of this act shall annually pay at least fifteen hundred dollars for the salary of a superintendent of schools, such town shall be entitled to seven hundred fifty dollars from the state treasury, which amount shall be paid toward the salary of said superintendent; and the commissioner of public schools shall draw his order for said amount upon receipt of the proper certificate from the chairman and clerk of the school committee of said town. *Ibid.*, S. 2.

Teachers, Certificate of Qualification.—No person shall be employed to teach, as principal or assistant, in any school supported wholly or in part by public money unless such person shall have a certificate of qualification issued by or under the authority of the state board of education. And in case any town shall pay or cause to be paid any of the public money to any person for teaching as aforesaid who did not, at the time of such teaching, hold such certificate, then the commissioner of public schools shall deduct a sum equal to the amount so paid from the amount of the state's money due, or which may thereafter become due, such town before giving his order in favor of such town for any of the public money under the provisions of Chapter 53 of the General Laws. P. L., C. 1114, S. 1.

Teachers; School Officers Ineligible.—No member of the school committee of any town shall, so long as he continues in said office of member of the school committee, be eligible or employed to teach as principal or assistant in any school supported entirely or in part by the public money, within the town where said member of the school committee resides. C. 61, S. 6.

Truant Officers Appointed.—The school committee of each town shall annually, in the month of December, appoint one or more persons as truant officers, and fix their compensation, which shall be payable from the appropriation for public schools, who shall by virtue of said appointment be clothed with the power of special constables. Said truant officers shall, under the direction of the school committee, inquire into all cases arising under the provisions of this chapter, or under any ordinances made in pursuance thereof by the town for which they were appointed, and shall alone be authorized, in case of violation of any of the provisions of this chapter or of any such ordinances, to make complaint therefor; they may also serve all legal processes issued in pursuance of this chapter or of any such ordinances, but shall not be entitled to receive any fees for such service: *Provided, however*, that

in the case of the commitment of any person under the provisions of any section of this chapter or of any ordinance made in pursuance thereof, or for default of payment of any fine and costs imposed thereunder, such officer shall be entitled to the regular fees allowed by law for similar service. C. 64, S. 3.

The general statute which opens all the public schools in the state to the children of officers and soldiers without cost does not exempt the estate of such officer or soldier from taxes levied for school purposes.—*Carpenter v. School Trustees*, 12 R. I. 574.

Wages for the labor of a minor cannot be recovered, because of a violation of law requiring minors to be sent to school.—*Birkett v. Chatterton*, 13 R. I. 299.

Vacancies.—In case of a vacancy other than that created by expiration of the term of any member of a school committee, such vacancy shall be filled by the town council until the next annual town meeting for state or town officers. C. 54, S. 7.

School Districts Abolished.—All the school districts in this state that have not prior to January 1, 1904, been abolished according to law shall be and they hereby are declared abolished on and after said January 1, 1904, and all title and interest in all of the schoolhouses, land, furniture, and other property which was vested in the several districts shall be vested in the town in which the said districts were located. The property so vested shall in the case of each town be appraised by a commission of three disinterested persons to be appointed by the common pleas division of the supreme court in the county in which such town is situated, upon the request of the school committee of said town, and at the next annual assessment of taxes thereafter a tax shall be levied upon the whole town equal to the amount of said appraisal; and there shall be remitted to the taxpayers of each district their proportional share of the appraised value of the school property in such district: *Provided*, that if any district be in debt, and said debt be assumed by the town, the amount of said debt shall be deducted from the whole amount to be remitted to the taxpayers of said district; if however the parties in interest prefer, the differences in the value of the property of the several districts may be adjusted in such manner as they may agree upon: *Provided*, that the selection of teachers, and election of superintendent, in such towns as do not unite for the employment of a superintendent, and the entire care, control, and management of all the public school interests of the several towns, shall be vested in the school committee of the several towns. P. L., C. 1101, S. 1.

Where a vote of the town committee, refusing to pay certain sums due for teachers' wages, is reversed upon appeal to the commissioner of public schools, said court has no authority to draw an order upon the town treasurer to pay said sums, but must certify his decision to the town committee, requesting them to draw the order required, and, if they refuse, a mandamus may be granted to compel them to draw the order.—*Randall v. Wetherell*, 2 R. I. 120.

The trustees of a school district may, subject to the control of the district meeting, lawfully permit the district schoolhouse to be used, out of school hours, for the purpose of private instruction in vocal music of the district scholars and others residing in the district; and it is no objection to such use that the teacher is compensated by private subscription or otherwise.— *Barnes' Appeal*, 6 R. I. 591.

P. L., C. 1101 upheld as constitutional. The transfer of the property of a school district to the town does not violate the principle that private property shall not be taken for public use without due process of law. It is a mere transfer of public property from one *quasi*-public corporation to another.— *School Committee of North Smithfield*, 26 R. I. 164.

SEALER OF LEATHER.

A sealer of leather is chosen annually at the annual town meeting. C. 39, S. 1.

SEALER OF WEIGHTS AND MEASURES.

A town sealer of weights and measures is elected annually at the annual town meeting. C. 39, S. 1.

Sealers, Town, Deputies.— The different town councils of the several towns may appoint, upon recommendation of their respective town sealers, one or more persons as deputy sealers of their town who shall assist the said town sealer, and in the absence from duty of such town sealer shall perform all the duties of town sealer as may be required of them for the time being. C. 167, S. 7.

SERGEANT, TOWN.

See "Town Sergeant."

SHIPWRECKS, COMMISSIONERS.

The town council of every town, the territorial limits of which extend to the seashore, except the town of New Shoreham, shall annually appoint a commissioner of wrecks and shipwrecked goods, with power to appoint one or more deputies. The town council may make the commissioner such compensation for his services and expenses as shall be just, to be ascertained, in case of disagreement between the commissioner and town council, in the same manner as is before provided for the adjustment of the like question between the commissioner and the owner of the property. C. 119, SS. 18-29.

SUPERINTENDENT OF THE POOR.

See "Overseer of the Poor."

SUPERVISORS OF ELECTION.

Appointment; Duties.— At least ten days before any election the town councils of towns shall appoint four and may appoint six, supervisors of election for each town or voting-district wherein an election

is to be held, in their respective towns, who shall be republicans and democrats in equal numbers, to be selected from a list of not less than six electors presented to said town council of the town, by the town or voting-district committee of the republican and democratic parties, respectively, the republican supervisors to be selected from the republican list, and the democratic supervisors from the democratic list, or, in case any such committee shall fail to submit such list within the required time, from electors of the same political party as the committee so failing to submit such list. Every person appointed a supervisor of election shall, within forty-eight hours thereafter, be notified in writing by the town clerk, of such appointment; and the person so appointed shall, in writing and within forty-eight hours after receiving such notice, notify said clerk from whom such notice was received of his acceptance or declination of the appointment. In case no notice shall be received by said clerk from a person appointed as aforesaid within the time specified, it shall be deemed that the person so appointed has declined to serve. It shall be the duty of said supervisors of election to be present at the opening and at the closing of the polls at said election in the town or voting-district for which they shall be respectively appointed, and during the time the same shall be kept open, and they shall personally supervise the opening of the ballot boxes, and the sorting, counting, certifying, sealing up and returning, of the ballots cast in said town or voting-district; and they shall make returns, by joint or separate report, in national and state elections, to the returning-board or boards to whom said ballots are by law required to be returned, and in town elections to the town councils, setting forth that they have performed the several duties herein required of them, and may make a statement of such other facts relating to the premises as they may deem proper to bring to the attention of said returning-board and town council, respectively. Each of said supervisors of election shall be sworn to the faithful discharge of said duties, and shall receive such compensation for his services as may be from time to time fixed by the town council. Any vacancy existing among said supervisors of election, whether by declination or refusal to serve or by failure from any cause to appear at, or to remain during, the time when they are required to perform their said duties, shall be immediately filled by the president of the town council from the lists before mentioned, by the substitution of a person of the same political party as was the supervisor first appointed. But nothing in this section contained shall be so construed as to relieve the moderators and clerks or district clerks from any of the duties or liabilities by law required or imposed upon them as such officers. C. 11, S. 32.

Have Charge of Ballots.—The supervisors appointed in each voting-district and town, shall have the charge of the ballots therein, received from the town clerks as hereinbefore provided, and shall receipt for the

same to the moderator, and shall furnish them to the voters in the manner hereinafter set forth. A duplicate list of the qualified voters in each town or voting-district, shall be prepared for the use of the supervisors, and all the provisions of law relative to the preparation and furnishing of voting-lists shall apply to such duplicate lists. Two of said supervisors, one a democrat and the other a republican, shall be detailed by the moderator to act as ballot clerks. The two supervisors detailed as above shall have immediate charge of the duplicate list and the ballots, and shall furnish them to the voters in the manner hereinafter set forth. *Ibid.*, S. 33.

Act at All Elections on Same Day.— Whenever any of the elections provided for by sections two or three of this chapter shall occur on the same day as an election for national or state officers, in any town, the supervisors appointed hereunder shall be the supervisors for all of such elections. *Ibid.*, S. 34.

SURVEYORS OF HIGHWAYS.

See "Highway Surveyors."

TOWN CLERK.

Election; Vacancy Filled.— The town clerk is chosen annually at the annual town election, by a separate vote and by ballot, if a vote by ballot be demanded. C. 39, SS. 1, 7.

In case of failure to elect a clerk, the meeting may be adjourned, for the purpose of completing the election, from day to day, not exceeding three days beyond the first day of meeting. *Ibid.*, S. 3.

Whenever any town clerk is removed by death or otherwise, the town treasurer issues his warrant, directed as in other cases, to warn the electors to assemble in town meeting to choose a town clerk in the room of the one so removed. *Ibid.*, S. 10.

Appointed by Town Council.— Whenever it shall satisfactorily appear to the town council that the town clerk is disqualified from any cause to exercise and perform the several duties of his office, they may and shall appoint a town clerk *pro tempore*, who shall be duly qualified and authorized to perform all the duties of town clerk, until such disability of the town clerk is, in the opinion of the town council, removed, or until a town clerk shall be legally elected by the town. C. 40, S. 11.

Absence from Office Forbidden; Penalty.— If any town clerk shall absent himself from his office between nine o'clock in the forenoon and twelve o'clock at noon, or between two o'clock and five o'clock in the afternoon of any day except Sunday within twenty days next preceding any meeting held for the annual election of state or town officers,

representatives in congress, or electors of president and vice-president of the United States, he shall appoint a deputy-clerk, whose duty it shall be to attend the office during such absence and perform all the duties thereof: *Provided*, that it shall not be necessary to appoint a deputy-clerk under this section, whenever a deputy has been or shall be appointed under section two of this chapter, and continues competent to act during any period covered by this section. C. 41, S. 4.

Every town clerk who shall refuse or wilfully neglect to appoint a deputy when absent, as last aforesaid, shall be fined one hundred dollars. *Ibid.*, S. 5.

Bond Given.—Every town clerk shall, within thirty days of the time of being sworn into office, give bond to the town treasurer of the town, with sufficient surety, in such sum as the town council of such town shall prescribe, conditioned for the faithful performance of the duties of his office. *Ibid.*, S. 1.

BIRTHS, DEATHS AND MARRIAGES.

Custodian of Records.—The town clerks and registrars of the several towns shall have custody of all records of births, deaths, and marriages of their respective towns whether made under the statutes now in force or any former statute. C. 100, S. 16.

Non-Residents Distinguished.—Births, marriages and deaths of non-residents are distinguished from those of residents in the returns by being arranged separately. *Ibid.*, S. 17.

Monthly Reports.—The clerk of each town shall on the first day of each and every month make a certified copy of all births, marriages, and deaths recorded in the books of said town during the previous month, whenever the parents of the child born, or the bride, or the groom, or the deceased person, were resident in any other town or city in this state, or in any other state, at the time of said birth, marriage, or death; and shall transmit such certified copies to the clerk or registrar of the town, city, or state, in which such parents of the child born, the bride, or the groom, or the deceased were resident at the time of said birth, marriage, or death, stating in case of a birth, the name of the street and number of the house, if any, where such parents resided, the place of birth of such parents and the maiden name of the mother, whenever the same can be ascertained; and the clerk or registrar so receiving such certified copies shall record the same in the books kept for recording births, marriages, and deaths. Such certified copies shall be made upon blanks to be furnished for that purpose by the secretary of the state board of health. *Ibid.*, S. 20.

Not Returned.—If it shall come to the knowledge of a town clerk, or any person appointed under the provisions of section one of this chapter, that any birth, marriage, or death which has occurred in his town

has not been returned to him as required by this chapter, or has not been recorded, such town clerk or person shall record the facts called for by section three of this chapter, to the extent he shall receive in any way any credible information of the same. If any error shall be made in the return of any birth, marriage, or death, or shall be discovered in the records of births, marriages, or deaths, such error shall be corrected without erasure. In each case the source of information, from which the addition or correction is made, and the date of making the same shall be noted on the face of the record, and such town clerk or person shall attest the same by his signature thereon. Such town clerk or person shall annually, on or before the first Monday in March, make duly certified returns to the secretary of the state board of health of all such additions and corrections made during the year ending on the thirty-first day of December next preceding. P. L., C. 616, S. 1.

Penalty for Neglect.—Every town clerk who shall wilfully or unreasonably neglect or refuse to perform any of the duties imposed on or required of him by this chapter shall be fined not exceeding twenty dollars nor less than two dollars for each offence. C. 100, S. 13.

Record and Returns.—The town clerks of the several towns shall obtain, chronologically record, and index, as required by the forms prescribed by section three of this chapter, all information concerning births, marriages, and deaths occurring among the inhabitants of their respective towns; and on or before the first Monday in March, annually, shall make duly certified returns thereof to the secretary of the state board of health for the year ending on the thirty-first day of December next preceding, accompanying the same with a list of the persons required by law to make returns to them who have neglected to do so, and with such remarks relating to the objects of this chapter as they may deem important to communicate. *Ibid.*, S. 1.

Births, Militia and School Statistics.—The town clerks of the several towns or other persons appointed under this chapter to collect the births in the several towns, shall annually, in the month of January, collect the facts concerning the births within their respective towns required by this chapter, and shall, so far as practicable, at the same time collect the names of all persons liable to be enrolled in the militia, as required by title thirty-four, and the census of all persons between the ages of five and fifteen years inclusive, as provided by chapter fifty-four, and shall receive therefor such compensation as the town council of their respective towns shall determine. *Ibid.*, S. 21.

Canvassers, Board of, Clerk.—The town clerk acts as clerk of the board of canvassers of his town, and is paid for the services performed by him in that capacity. C. 8, SS. 2, 21.

See "Town Council," "Canvassers," for an account of his duties.

Corporations, Capital Stock, Certificate.—The officers of every manufacturing corporation, when the capital has been fully paid in, shall file a certificate duly signed and sworn to in the office of the clerk of the town where the manufactory shall be established. In case of increase of the capital stock of said companies, like proceedings shall be had as to the amount added and paid in. C. 180, S. 2.

“Debts contracted” does not mean torts of the corporation or judgments founded on such torts.—*Leighton v. Campbell*, 17 R. I. 51.

Certificate of Condition.—Every manufacturing company included within the provisions of this chapter shall file in the office of the clerk of the town in which an office of the corporation is located, annually, on or before the fifteenth day of February, a certificate of its financial condition, on the thirty-first day of December next preceding. C. 180, S. 11.

Filing a certificate which is not in fact true does not relieve the stockholders from liability.—*Congdon v. Winsor*, 17 R. I. 236.

In an action of debt against stockholders to recover a judgment against a corporation which had not filed the certificate required by law, the corporation need not be joined.—*Third National Bank v. Angell*, 18 R. I. 1.

Deeds, Mortgages, Separate Index.—It shall be the duty of the town clerk of each town within this state to make and keep a separate alphabetical general index of all deeds, mortgages, and other instruments recorded in the office of said town clerk, which indices shall refer to the book and page of the records wherein said deeds, mortgages and other instruments are recorded. C. 41, S. 6.

Record.—Whenever any instrument entitled to record shall be presented for record, the town clerk immediately thereupon shall cause to be entered in writing on said instrument the day, the hour, and the minute when the same was presented for record, and shall forthwith enter the same in the order of presentment in a receiving book to be kept for that purpose. C. 202, S. 3.

Deputy Clerk.—Town clerks may, by and with the approbation of the town council, appoint a deputy, whenever such appointment shall be necessary; and such deputy, so appointed, shall have all the powers and perform all the duties which are incumbent on the town clerk, being thereunto qualified by taking the oath of office. C. 41, S. 2.

Every town clerk appointing a deputy shall be responsible for the good conduct of the deputy; and may take bond with surety in such penalty as he may require, conditioned for the faithful discharge of the duties of the office for the time during which such deputy shall exercise the same; and such clerk may revoke such appointment and cancel such bond at his discretion. *Ibid.*, S. 3.

DOG LICENSES.

Licenses Issued.— All dogs above the age of six months are required to be licensed, annually, upon payment of the fees prescribed. The town clerk receives the fees and issues the license. The fees are paid by the clerk into the town treasury, less the sum of fifteen cents for each license retained by the clerk, as his fee. C. 111, SS. 10, 11, 29.

An unlicensed dog going at large has no apparent protection under the law; any person may kill him. So a licensed dog not having on a collar bearing the owner's or keeper's name distinctly marked thereon, may be killed anywhere outside the owner's or keeper's inclosure. But one cannot legally kill a licensed dog that is trespassing and doing damage on his premises, although its owner may have been notified of previous trespasses of like kind and requested to prevent their recurrence.— *Harris v. Eaton*, 20 R. I. 81.

Penalty for Neglect.— Every town clerk who shall wilfully neglect to perform any of the duties imposed upon him by the provisions of this chapter, shall forfeit one hundred dollars for the use of any person who shall sue for the same. *Ibid.*, S. 18.

Posting up Notices.— The town clerks of the several towns shall annually, in the month of March, post up notices in five or more public places therein, giving notice to the people thereof, of the time and place of issuing the licenses provided for in section ten of this chapter. *Ibid.*, S. 19.

Thoroughbreds not Taxed.— But no tax whatever shall be imposed upon thoroughbred dogs, which are kept for breeding and stud purposes only, *providing*, such dog shall be owned by a breeder and annual exhibitor of thoroughbred dogs, and *providing* such dogs shall be confined in a regular breeding kennel, except when abroad, accompanied by the owner or manager of such kennel. The owner of such dog and kennel shall present to the town or city clerk of the town in which such kennel is situate, an affidavit stating the number of dogs kept therein, for breeding and stud purposes only, the name of the owner, and that said animals are not permitted to be abroad except when accompanied by the owner or manager of such kennel, and shall pay to said town or city clerk on or before the first day of April in each year, the sum of ten dollars, which shall be credited to the dog fund of said town or city. Whenever any town or city clerk shall be presented with such affidavit and the sum of ten dollars, he shall give to the person presenting the same, a receipt containing the name of the owner of the dogs mentioned in such affidavit, which receipt, if presented to the town clerk or city clerk of any town or city in which such kennel is located, within ten days from the date thereof, shall exempt the dogs mentioned therein from taxation. P. L., C. 462, S. 1.

ELECTIONS.

Adjourned or Secondary.— The provisions of this chapter apply in case of an adjourned or subsequent election in any town, and in such

case the clerk of such town shall procure and furnish ballots in the form provided in this chapter. A record of the number of ballots printed and furnished to each voting place shall be kept and preserved by such town clerk. C. 11, SS. 47, 48.

Cap. 828, P. L., March, 1890, is in addition to cap. 731, P. L., March, 1889, and provides for second elections.—*In Re Ballot Provisions*, 17 R. I. 825.

Ballots Provided.— There shall be provided for each voting-place at which an election is to be held not less than sixty ballots for every fifty and every fraction of fifty qualified voters therein; and it shall be the duty of the town clerk in each town in which an election for any of the officers mentioned in the first section of this chapter is to be held to certify to the secretary of state fourteen days previous to any such election the number as near as possible of voters then qualified to vote at each voting-place of such town; and to provide said ballots for any election mentioned in sections two and three of this chapter, respectively. C. 11, S. 26.

Where no official ballots are provided, ballots cast without the statutory [X] mark were lawfully cast and counted.—*Hammond, Petitioner*, 24 R. I. 299.

Ballot-Boxes Provided.—Town clerks of the several towns shall, at the expense of their respective towns, furnish a sufficient number of ballot-boxes for the voting-places in their respective towns, and shall see that such boxes are kept in proper condition for use and that each voting-place is supplied with the required number of such boxes on the day of every town or district meeting held thereat. P. L., C. 829, S. 1.

Ballots to State Returning Board.— The ballots given in at any election for general officers (i. e., governor, lieutenant-governor, secretary of state, and general treasurer), likewise the ballots cast for electors of president and vice-president of the United States, after having been counted and declared in open meeting by the moderators and clerks, shall be sealed up and certified in the manner provided by law, and be delivered to the state returning board by the clerk of the meeting at which they were given in in person, or by a town officer by him appointed for that purpose, within forty-eight hours after such sealing is done. P. L., C. 826, S. 2; P. L., C. 827, S. 2.

Ballots Delivered by Other Person.—Every clerk upon whom is imposed by this act the duty of delivering any package of ballots may appoint in writing some officer of the town where he resides to deliver such package in his stead, in case of his sickness or absolute inability to deliver the same in person. P. L., C. 829, S. 25.

Ballots Delivered to Moderator.—The town clerk shall send to the moderator of each voting-place before the opening of the polls on the day of election, the ballots prepared, sealed, and marked for such voting-place by the secretary of state, or by himself, and a

receipt for the same shall be returned to him from the moderator, which receipt with a record of the number of ballots sent shall be kept in the clerk's office. C. 11, S. 30.

Ballots Folded and Endorsed.—Before distribution the ballots shall be folded so that no printing shall appear except the endorsement, printed on the back and outside, "OFFICIAL BALLOT FOR," followed by the designation of the polling-place for which the ballot is prepared, the date of the election, and a fac-simile of the signature of the secretary of state, or town clerk, respectively, who has caused the ballots to be so printed and folded. *Ibid.*, S. 23.

Ballots Lost or Stolen.—In case the ballots furnished shall fail to be duly delivered, or shall be destroyed, or stolen, or lost, the town clerk shall procure and deliver to the moderator requiring the same other ballots substantially in the form of those wanting. *Ibid.*, S. 31.

Ballots in Packages; Number Recorded.—All ballots when printed shall be folded as hereinbefore provided and put up in packages of one hundred each. A record of the number of ballots printed and furnished to each polling-place shall be kept and preserved by the secretary of state or town clerk, respectively, furnishing the same. *Ibid.*, S. 25.

Ballots, Receipts for.—The clerks of towns to whom packages of ballots are sent by the secretary of state shall on delivery of such packages, return receipts therefor to the secretary. *Ibid.*, S. 29.

Ballots, State Senators and Representatives.—All ballots given in for senators and representatives in the general assembly at any election therefor, including elections at which there is no choice in towns not divided into voting-districts, after having been counted and declared in open meeting by the moderators and clerks, shall be sealed up and certified in the manner provided by law and be delivered in person by the respective clerks of the meetings where they were given in, as provided in section 4 of this act, within twelve hours after such sealing is done; in towns divided into voting-districts, to the town clerks; and in towns not divided into voting-districts, to the state returning-board. Said board and clerks shall be in their respective offices to receive such ballots during the whole of the said twelve hours, unless all of said ballots given in in their respective towns are sooner received by them, and shall give to the person delivering said ballots a receipt therefor. P. L., C. 828, SS. 3, 4.

The provision of the Constitution, art. 8, sec. 5, requiring that the ballots for senators and representatives in the several towns after the polls are closed shall be counted by the moderator is mandatory.—*Saml. M. Knowles, Pet'r*, 25 R. I. 522.

In towns divided into voting-districts, the packages containing the ballots cast at any such meeting for town officers, and voting-district officers, and for and against any question submitted to the electors of

such town, after such ballots have been counted, recorded, sealed, and endorsed as hereinbefore provided, shall be delivered in person by the clerk of such meeting to the clerk of the town where such meeting was held within twelve hours after such sealing is done. P. L., C. 829, S. 14; C. 1229, S. 22.

Candidates, Lists.—In case of an election of town or voting-district officers, the town clerk shall four days at least before such election prepare printed lists of all candidates to be voted for, substantially in the form of the ballot to be used in such election, and shall immediately after the reception or preparation of the lists mentioned in this section, cause such lists to be conspicuously posted in not less than five public places in such town and voting-district. *Ibid.*, S. 28.

Candidates, Withdrawal.—Requests for withdrawal of candidates may be filed with the town clerk thirteen days previous to the election for which such candidates were nominated. *Ibid.*, S. 17.

Certificates, Refusal; Penalty.—Every town clerk who shall neglect or refuse to furnish any city, town, or voting-district officer elect with a proper certificate of his election as soon as may be thereafter shall be fined not less than fifty dollars nor more than five hundred dollars, or be imprisoned not exceeding six months, either or both, at the discretion of the court which shall try such offender. P. L., C. 829, S. 28.

Information to Voters.—For any election mentioned in sections two and three of this chapter, the town clerk shall prepare full instructions for the guidance of voters, and cause the same to be printed on separate sheets to be called INSTRUCTION SHEETS; he shall also cause to be printed sections 43, 44, 45 and 46 of this chapter, which he shall furnish with the ballots for use at each such election. He shall also cause to be printed on paper of a different color from that of the official ballots and without the *fac-simile* endorsements, ten or more copies of the form of the ballot provided for each voting-place at each election therein, to be called SPECIMEN BALLOTS, and furnished with the other ballots for such voting-place. C. 11, S. 27.

Nomination Papers Certified.—The nomination papers shall, before being filed, be respectively submitted to the town clerks of towns in which the signers purport to be qualified voters, and each town clerk to whom the same is submitted shall forthwith certify thereon what number of the signatures are names of qualified voters in the town for which he is clerk. *Ibid.*, S. 13.

Nomination Papers Filed.—Certificates of nomination, nomination papers and requests for withdrawal of candidates and nominations in substitution, shall be filed with the town clerk or some person in his office officially representing him. Such papers shall be open to public inspection and shall be preserved not less than one year. *Ibid.*, SS. 19, 20.

Penalty for Neglect or Fraud.— Any public officer upon whom a duty is imposed by this chapter, who shall wilfully neglect to perform such duty, or who shall perform it in such a way as to hinder the objects of this chapter, shall be punished by a fine of not less than fifty nor more than one thousand dollars or by imprisonment for not more than one year or by both such fine and imprisonment. C. 11, S. 46.

Secret Ballot, Adoption.— If at least one-tenth in number of the qualified electors in any town, not including cities, shall, twenty days previous to any general election of state officers on the Tuesday next after the first Monday in November of any year, file with the town clerk of such town a petition that the electors may at such general election cast their ballots for or against accepting the provisions of this chapter so far as the same apply to the elections mentioned in section three of this chapter such town clerk shall give notice of the same in his warrant calling the town or district meetings and shall at least eighteen days previous to the day of such election file with the secretary of state a certificate that the question "Shall the town accept the secret ballot law for towns?" is to be submitted to the vote of the electors in said town. If a majority of the ballots so cast shall be in favor of accepting the provision of this chapter so far as the same apply as aforesaid, then the said provisions of this chapter shall be in effect in such town; but if a majority of the ballots so cast shall be against accepting the provisions of this chapter, then the said provisions of this chapter shall not take effect in said town. *Ibid.*, S. 52.

Supplies Furnished.— The several town clerks shall at the expense of their respective towns procure for use at meetings held therein for the election of town and district officers a sufficient supply of blank forms of the endorsement provided for in section 10 of this act, printed upon adhesive labels not less than six inches in length and four inches in width, or upon strong paper of suitable size for enclosing the ballots as provided in section 9 of this act, and of the certificates provided for in section 12 of this act; and shall seasonably furnish at each voting-place therein, on the day of every election held thereat, an ample quantity of each of the articles named in this section, and of the articles provided in section 23 of this act, to be furnished to him by the secretary of state. P. L., C. 829, S. 24.

Estrays, Notifications.— The town clerk upon receipt of notice of an estray damage feasant shall cause to be made three notifications, attested under his hand, setting forth the natural and artificial marks of such animal, one of which notifications he shall cause to be set up in some public place in said town, and the other two in some public places in the several adjoining towns in the state, and shall also cause such notifications to be published in one of the newspapers published in the several

adjoining towns to that in which such estray shall be taken up. C. 130, S. 2.

Appraisal and Sale.—In case no owner shall appear within thirty days after an estray is taken up, the person having the same shall repair to the town clerk, taking with him two electors of the neighborhood, who shall by the town clerk be engaged to make a true and faithful appraisal of said animal; and the person who took up said animal shall pay the sum the same shall be appraised at, after all just charges are deducted, into the hands of the town clerk; failing to pay which, the said animal shall be sold at public auction after reasonable notice under the direction of the town clerk for the payment of said charges; and in either case the balance shall be retained for the use of the owner. *Ibid.*, S. 6.

Records; Fees.—Every town clerk shall keep a fair record of all his proceedings under this chapter, and shall pay all moneys by him received for any such estrays and for which no owner appears, into the town treasury immediately on receipt thereof; and if no owner appear, and it be appraised and he give a certificate as aforesaid, he shall have twenty-five cents therefor.

The provisions of this chapter shall not extend to any town where other provisions on this subject are made by law. *Ibid.*, SS. 9, 10.

Fire Escapes, Inspectors' Certificates.—Certificates of the inspector of buildings as to fire escapes may be filed in the office of the town clerk, there to be kept on file, and notices of revocation of such certificates shall be effective if filed and kept on file in the office of the town clerk. C. 108, S. 6.

Exemption; Appeals.—In case of appeal from a refusal by an inspector of buildings to give his certificate of exemption under section five of this chapter, or of compliance under section six of this chapter, after notice of such appeal the person aggrieved may file his reasons of appeal in writing with the town clerk, paying to the clerk fifty cents for filing the same. *Ibid.*, S. 11.

Fisheries, Commissioners.—The commissioners on inland fisheries shall cause a copy of their regulations to be filed in the office of the town clerk of any town in which any waters stocked with fish under the authority of this chapter may be and to which such regulations may apply. C. 174, S. 3.

Itinerant Vendors, Licenses.—Before selling under a state license every itinerant vendor shall exhibit the same to the clerk of each town where he proposes to make sales; and upon payment to said clerk of a further local license-fee of five dollars and the proof of payment of all such other license-fees, if any, as are legally chargeable upon local sales,

the said clerk shall record the state license in full, shall endorse upon it the words "Local license-fees paid," and shall affix his official signature together with the date of such indorsement. He shall then issue a local license authorizing sales within the limits of such town. C. 163, S. 6.

Jury and Military Exemptions.— Town clerks are exempt from service on juries, and from the performance of military duty. C. 227, S. 2; C. 296, S. 6.

Jurors, List.— The town council shall in the month of April in every year make a list of persons qualified to serve as jurors, which list shall be kept on file by the clerk of such town in his office. C. 227, S. 7.

A board of aldermen may empower a committee of themselves to prepare a jury list.— *State v. Board of Aldermen*, 18 R. I. 381.

Names Recorded and Sent to Common Pleas Court.— The names drawn at any meeting of the town council shall be immediately entered on a book kept by the town clerk for that purpose, the grand and petit jurors being kept separate, in the presence of said town council, who shall attest the correctness of the list as entered with their signatures, and the town clerk shall at once send a list of said names to the clerk of the common pleas division in the county. C. 227, SS. 18, 19.

Notice.— From time to time as occasion may require, any justice holding said common pleas division shall direct notice to be sent to the town clerks in the county that a certain number of grand jurors or petit jurors are required and the time and place at which they are required to attend; and every town clerk on receiving such notice shall select from the lists of jurors drawn as aforesaid in the order in which said names appear thereon so many names as may be required, and shall issue notifications to the town sergeant or to any constable, of the town where such jurors reside, under the seal of the town council and hand of the clerk, designating therein who are grand jurors and who are petit jurors and the time and place at which such jurors are required to attend. *Ibid.*, S. 21.

Pleas in abatement were bad because based on provisions of the statute not intended for defendant's benefit.— *State v. Mellor*, 13 R. I. 666.

Limited Partnerships, Certificates.— Certificates of limited partnerships must be filed and recorded in the office of the town clerk of the town in which the principal place of business of the partnership is situated. If such partnership shall have a place of business in different towns, the certificate shall be filed and recorded in like manner in the office of the town clerk of every such town.

In case of renewal or continuance of the partnership beyond the time originally fixed, a certificate thereof shall be made, executed and recorded in like manner as in the first instance. C. 157, SS. 4, 6.

Dissolution, Notice.—No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate, unless a notice of such dissolution shall be recorded in the office of the town clerk, where the original certificate or the certificate of renewal or continuance of the partnership was recorded, and in every other town clerk's office where a copy of such certificate was recorded, and unless such notice shall also be published for six successive weeks in at least two newspapers published within this state. *Ibid.*, S. 13.

Liquor License, Warrant for Vote on.—The town clerk shall upon petition of electors insert in the warrant calling town or district meetings a proposition providing for taking a vote on granting licenses for the sale of intoxicating liquors, and shall at least fifteen days previous to the day of said election file with the secretary of state a certificate that the question, "Will this town grant licenses for the sale of intoxicating liquors," is to be submitted to the vote of the people in such town. C. 102, S. 4.

Marriages, License.—Persons intending to be joined together in marriage in this state must first obtain a license from the clerk of the town or city in which they reside, or, if residents of different towns of the state, from the town or city clerk of the town in which they respectively reside, or, if not residents of the state, from the clerk of the town or city in which the marriage is to be solemnized. The license shall contain the information called for in the blank form (given in the statute) so far as the same is known to such persons, each of whom shall subscribe to the truth of the same in the presence of the clerk or an assistant clerk of that town or city in which they respectively reside. P. L., C. 549, S. 10.

Records.—The several town clerks shall record, in separate books to be kept by them for that purpose, the information furnished to them and subscribed to as provided in section ten of this chapter. *Ibid.*, S. 14.

Mechanics' Liens, Account Filed.—The commencement of legal process to enforce mechanics' liens shall be the lodging the account or demand for which the lien is claimed in the office of the town clerk of the town or towns in which the building, canal, turnpike, railroad, or other improvement is situated, with notice to what building, canal, turnpike, railroad, improvement and land and to what or whose estate in the same the said account or demand refers; and the said clerk shall record the names of the parties, the amount of the claims and the notice aforesaid, and the exact time of the filing of said account or demand in his office, in a book to be by him kept for that purpose; but the original account need not be recorded but shall be kept on file. C. 206, S. 7.

Whenever any account or demand is left with any town clerk, in pur-

suance of the preceding section, such clerk shall note thereon the time as near as may be, when the same was lodged with him. *Ibid.*, S. 8.

Medical Register; Certificate.— It shall be the duty of each town clerk to purchase a book of suitable size to be known as the "Medical Register" and to set apart one full page for the registration of each physician; and when any physician shall die or remove from the town, said clerk shall make a note of the same at the bottom of the page, and shall on the first day of January in each year transmit to the office of the state board of health a duly-certified list of the physicians of said town registered under this chapter, together with such other information as is hereinafter required, and perform such other duties as are required by this chapter. C. 165, S. 1.

The person registering shall exhibit his or her authority, and subscribe and verify by oath before such clerk an affidavit containing the facts as to such authority for practising medicine, together with his or her age, address, place of birth, and the school or system of medicine to which he or she proposes to belong. *Ibid.*, S. 2.

Militia Enrollment; Penalty.— The town council shall, whenever required by the commander-in-chief, cause to be prepared a list of persons liable to militia duty in the town, and deliver it to the town clerk, who shall record the same in a book to be kept by him for that purpose, and the clerk shall within sixty days after the delivery of such list to him, transmit to the adjutant general, upon forms to be supplied to him for that purpose, a certified copy of such list. C. 296, SS. 1, 3.

Every town clerk who shall neglect or refuse to perform in due time any of the duties imposed upon him by the provisions of this chapter shall be fined fifty dollars. *Ibid.*, S. 2.

Mortgages of Personal Property, Record.— Every town clerk shall record mortgages of personal property, and of chattels-real, in a book to be kept by him for that purpose, with the time when the same are received and recorded: *Provided*, that a mortgage of both real estate and personal property, or of both real estate and personal property, or of both real estate and chattels-real, may be recorded with the record of mortgages of real estate only; but in such cases the recording officer shall enter upon the index to the records of personal property and chattels-real a reference to the book and page upon which such mortgage is recorded. C. 207, S. 11.

A. gave a mortgage of personal property to B. February 14, 1900, which was recorded May 23, 1900. B. took possession of the property as mortgagee, June 4, 1900. C. attached the property on the same day as the property of A. *Held*, that the mortgage was invalid as against the attaching creditor.—*Burdick v. Coates*, 22 R. I. 410.

Partition, Plat and Decree Recorded.—The plat and decree of the court for partition of real estate shall be recorded in the records of land-

evidence in the town or towns in which the estate mentioned in such decree is situated. C. 265, S. 29.

Probate Court, Clerk, Duties.—The town clerk of each town, unless special provision be made by law or charter to the contrary, shall be the clerk of the probate court of the town. C. 209, S. 4.

The probate clerk shall attend the meetings of the probate court, and shall record its proceedings and also all wills, administrations, inventories, accounts, decrees, orders, determinations, and other writings, which shall be made, granted, or decreed upon by the probate court of such town, and shall have the custody and safe-keeping of the seal of said court and of all the books and papers belonging to the probate office, and shall not act as attorney before the court of which he is clerk. *Ibid.*, S. 5.

Records, Certified Copies.—Every town clerk upon payment or tender of his legal fees, shall furnish to any one demanding the same a certified copy of any list of voters whose votes have been given in any election, and upon like conditions shall furnish a certified copy of any registration of voters, and shall upon like terms, without any unreasonable delay, examine the records and certify to the estate of any person, and shall furnish copies of any instrument or writing which may be on record or in the files of his office. C. 7, S. 13.

School District Boundaries.—The town clerk shall record the boundaries of school districts and all alterations thereof in a book to be kept for that purpose, and shall distribute such school documents and blanks as shall be sent to him, to the persons for whom they are intended. C. 54, S. 12.

Small-pox, Notifications; records.—Whenever the town clerk of any town shall have knowledge, or shall have received information of the existence of small-pox in his town, he shall forthwith give or cause notice thereof to be given to the town council of such town, at the expense of the town, to be audited and allowed by the town council. For violating the provisions of this statute the clerk shall be fined twenty dollars, or be imprisoned not exceeding ninety days, either or both, in the discretion of the court. C. 94, S. 20.

The town clerk shall keep safely the vaccination record books deposited in his office by physicians, as required by the statute, without compensation, and deliver them to his successor; but he may charge lawful fees for searching the same or for copies. *Ibid.*, S. 31.

Town Meetings, Notice.—Town clerks shall not notify the electors of their respective towns of every town meeting prescribed by law, or otherwise legally called. C. 37, S. 5.

Special Meetings, Notice.—Whenever the town council, or whenever seven of the electors of any town consisting of less than three thousand

inhabitants, or five per cent. of the electors of any town consisting of more than that number, shall make a request in writing for the calling of a town-meeting to transact any business relating to such town in respect of which they shall have a right to vote, and direct the same to the town clerk, such town clerk shall cause the electors to be notified of the time when and the place where the same is to be holden, and of the business proposed to be transacted therein. *Ibid.*, S. 6.

Notice of Meetings Prescribed by Law.—The notice to the electors to meet in a town meeting prescribed by law, shall be given by the town clerk issuing his warrant, directed to the town sergeant or one of the constables of such town, requiring him to post, at least seven days before the day appointed for such meeting, written notifications in three or more public places in the town, of the time when and place where said meeting is to be holden and of the business required by law to be transacted therein. *Ibid.*, S. 8.

The notice of meetings, when called by request as aforesaid, shall be given in the manner provided for meetings prescribed by law. In towns in which the hour of meetings prescribed by law is fixed by law, meetings called by request shall be held at the same hour. In other towns such meetings shall be held at the hour named in the request. At all meetings called by request only the business stated in the warrants directing the calling of such meeting shall be acted upon. *Ibid.*, S. 9.

In calling meetings of the electors for the purpose of voting on a proposition of amendment to the constitution, it is not necessary to include in the warrants the whole of the proposed amendment.—*Opinion to the Lieutenant-Governor*, 21 R. I. 578.

The law requiring notices of district meetings to be posted in two or more places is directory, not mandatory, and a mistake made by the town sergeant in posting them did not render the election illegal or void.—*Horsie v. Edwards*, 24 R. I. 338.

Not Conflict with Elections.—In towns not divided into voting-districts, and in which town-meetings for the election of town officers and for the transaction of town business are held on the Tuesday next after the first Monday in November, such town-meetings shall be so held and conducted as not to interfere or conflict with elections held on said day under the provisions of Chapter 11 of the General Laws. C. 39, S. 2.

Voters; Registry.—The secretary of state prepares and furnishes to the town clerks of the several towns a book entitled the **REGISTRY BOOK**. It is ruled under suitable headings to indicate the time when and the place where any person, native born, desiring to be registered was born; if the person was born or has resided without the state, when he last came to reside within the state; and if he was born or has resided without the town, when he last came to reside within the town; and the place in the town at which the person resided at the time of registering. Said registry book shall also be ruled under suitable headings to indicate the

time when and the place where any person of foreign birth or parentage, desiring to be registered, was born; when and where he landed in the United States; the date when he last came to this state; the date when he last came to the town; where and when and by what court naturalized; when, where, and by what court his father was naturalized; and the place, street and number in the town at which the person resided at the time of registering. C. 7, S. 1.

Time to Register; False Certificate.— Every person who is or within a year may be qualified to vote, upon being registered, shall go to the town clerk of the town in which he resides and shall annually within the year ending on the last day of June register his name and thereby certify to the truth of the facts stated in the appropriate heads of such registry. Every person who shall knowingly make any false certificate in registering his name in any such registry book shall be fined not exceeding fifty dollars or be imprisoned not exceeding sixty days: *Provided*, that before any person's name shall be placed upon the voting-list, if such citizen shall be of foreign birth, he shall file proof, at least five days before any meeting of the board of canvassers, with the town clerk that he is a citizen of the United States, and such proof shall be subject to the approval of the board of canvassers of the town or ward wherein such person shall claim the right to vote. *Ibid.*, S. 2.

Lists Prepared.— The several town clerks shall annually place upon the voting-list the names of the several persons who have previously been upon the voting-list, according to the provisions of the statute, against whom a property-tax to the amount of one dollar or upwards shall have been assessed. *Ibid.*, S. 3.

Penalty for False Entry or Certificate.— Every clerk making a false entry or certificate of any fact required to be entered or certified under the provisions of the statute, shall be fined not exceeding five hundred dollars or imprisonment not exceeding six months. *Ibid.*, S. 6.

Penalty for Refusing Certificate.— A town clerk authorized to receive taxes or give certificates, who shall wilfully refuse to grant the certificate provided by law to any person demanding the same and legally entitled thereto, or who shall wilfully and fraudulently grant such certificate to any person not legally entitled thereto shall be fined one hundred dollars for each offense. *Ibid.*, S. 10.

Office Hours.— The several town clerks are required to be in their respective offices, for the purpose of attending to the registration of voters, for the three secular days next preceding and including the last secular day of June in each year, and there to remain from nine o'clock in the forenoon until one o'clock in the afternoon, and from two o'clock to nine o'clock in the afternoon; and shall attend to such registration at such other times as persons may apply to be registered. C. 7, S. 11.

Town Council.—The town clerk is clerk of the Town Council. For his duties see "Town Council."

Voting-Lists to Moderators.— The town clerk of every town divided into districts for the purpose of voting, shall send to the moderator of each of said districts a certified copy of the list for his district before the time fixed for opening the district meetings for any election. *Ibid.*, S. 13.

Voting-District; Notice of First Meeting.— At the first meeting of any voting-district for the purpose of an election, the town clerk shall cause notice of the time, place, and purpose of such meeting to be given by issuing his warrant to the town sergeant or one of the constables of said town, requiring him to post up notifications thereof in two or more public places in each of said districts. C. 9, S. 5.

TOWN COUNCIL.

Election.—The town council consists of not less than three nor more than seven members, the number to be determined before their election, at the annual town meeting. C. 39, SS. 1, 8.

They are chosen next in order after the election of town clerk; and in choosing them the vote, whether by ballot or otherwise, is taken for the whole number at the same time; and, if by ballot, the names of all the persons voted for by one elector are placed upon one ballot. C. 49, S. 9.

Ballots for the members of the town council may be deposited in the ballot-box at the same time with ballots for any other officers, if so ordered by the town. *Ibid.*, S. 10.

In case of a ballot for members of the town council, the names shall be numbered upon the ballots, and, in counting them, the places numbered shall be considered as separate places. *Ibid.*, S. 12.

The number of town councilmen to be chosen may be fixed by common consent or acquiescence as well as by formal vote.—*State v. Andrews*, 15 R. I. 394.

By the charter of New Shoreham, the first and second wardens had been members of the town council *ex officio*. On *quo warranto* against one of these wardens, it was *held* that he was legally a member of the town council.—*State v. Champlain*, 16 R. I. 453.

Powers, General.—The town council of each town shall have full power to manage the affairs and interests of such town, and to determine all such matters and things as shall by law come within their jurisdiction. *Ibid.*, S. 4.

Quorum.—A majority of the persons elected members of any town council shall be a quorum; and a majority of the members present at any legal meeting may determine any matter legally before them. C. 40, S. 1.

Auctioneers, Regulation.—They shall have power to establish such regulations for the conducting of sales and auctioneers' commissions in their respective towns as they may think necessary. C. 159, S. 9.

Bad Fame, Persons; Removal of.— Every town council shall, upon the complaint of any overseer of the poor of the town, have discretionary power to order to depart from the town and to remove as aforesaid all persons, not settled in the town, who are of bad fame and reputation, although such persons shall not at the time of such removal have become or shall not be likely to become chargeable to such town. C. 80, S. 24.

Billiard Tables to be Licensed.— No person shall keep a billiard table, bagatelle table, pool table, scippio table, or any table of a similar character in any saloon, shop, or place of business within this state, or own or keep any such table for public use or profit within this state, without a license from the town council or board of aldermen of the town or city where the same is kept or used first had and obtained. Such licenses may be granted or refused, and, if so granted, shall continue for a term not exceeding one year. C. 104, S. 10.

The fee for such license to be fixed by the town council or board of aldermen granting the same, shall be not less than ten nor more than two hundred dollars. *Ibid.*, S. 11.

Bonds to.— In every case where bonds are required by law to be given to any town council, they may be given to the town council by name as such without naming the persons at the time constituting such town council, and may be sued in like manner. C. 40, S. 39.

Limits to Compact Part of Town.— The town council of each town shall define the limits of the compact part of such town; which limits shall be taken and deemed to comprehend the compact part of such town, within the meaning of this chapter. C. 104, S. 3.

Bowling Alleys.— The keeper of any bowling-alley or billiard-table who shall refuse or neglect to comply with an order or decree relating thereto which any town council shall be authorized to make shall be fined fifty dollars. *Ibid.*, S. 4.

Tax, Regulate, Suppress.— They may tax, regulate, and, if they shall find it expedient, prohibit and suppress, bowling-alleys and billiard tables in their respective towns, conforming to law. C. 40, S. 16.

Tax on.— The town council of each town shall assess, levy and collect a tax not exceeding twenty-five dollars nor less than five dollars per annum on every person who shall own or keep a bowling-alley in such town, for each bowling-alley by him kept; and a tax not exceeding two hundred dollars per annum for each pistol-gallery, rifle-gallery, or other building or enclosure referred to in section two of this chapter, on the owner or keeper thereof. C. 104, S. 7.

Such tax may be collected for any bowling-alley or any person who shall own or occupy the house or building in which such bowling-alley shall be kept. *Ibid.*, S. 8.

Such taxes shall be collected in the manner prescribed for the collection of town taxes, and appropriated, one-half thereof to the use of the town and one-half to the use of the state. *Ibid.*, S. 9.

Bread, Assize.—They may make ordinances, by-laws and regulations for settling the assize of baker's bread in their respective towns, not contrary to the laws of the state: *Provided*, that the penalty for any breach of the same shall not exceed five dollars, or the forfeiture of the bread not made in conformity thereto. C. 40, S. 19.

Burial-Grounds.—Town councils may take and hold to themselves and their successors in office lands in their towns conveyed to them in trust for burial purposes, and in like manner they may receive and hold all funds conveyed to them for the purpose of ornamenting and keeping in repair burial-lots and execute said trusts in accordance with the terms contained in the instruments of conveyance.

They may also take possession of and hold ancient, neglected, or abandoned burial grounds whenever they can do so without opposition from the persons interested therein; they may hold and manage trust funds given to them for the care of such grounds, and may in their discretion appropriate from the treasury of their towns money for the purpose of keeping in repair and preserving the monuments in and maintaining any such burial ground. *Ibid.*, SS. 35, 36.

Burials, Regulation.—The town council of any town may prohibit burials in the compact or thickly-populated parts of such town, and may make such by-laws and ordinances relating to burials and the use of grounds for burials in such town as they may think necessary for preserving the health thereof, and may enforce such ordinances in the manner provided in sections one, two and three of this chapter. C. 91, S. 18.

Business, Continue Pending.—Town councils sitting either for the transaction of council or probate business may continue from time to time any business pending before them which may be undisposed of, and, whenever from any cause a quorum of the council shall not be present at the time for any regular meeting thereof, the council clerk shall continue all business and proceedings returnable to or pending before the said council to the next regular meeting thereof, and all parties in interest notified or cited to appear before the council shall be held to appear before said council at the time to which such proceedings or business may be continued, in the same way and with the same effect in all respects as they were held to appear at the meeting from which such business or proceedings were continued. C. 40, S. 3.

CANVASSERS.

Boards Constituted.—The town councils shall be the boards of canvassers of voters in their respective towns. C. 8, S. 1.

A representative of the General Assembly and a mayor were voted for at the same election. Ballots for mayor found in the envelopes were rightfully

rejected; and all ballots voted by one voter which could be legally enclosed in envelopes must be put in one envelope.—*State v. Collins*, 16 R. I. 42.

The board of canvassers of a city in recounting the ballots cast at a political caucus and in determining the parties elected, exercises a judicial power which cannot be reviewed upon *quo warranto* proceedings brought to obtain the offices of the parties declared to be entitled thereto upon the recount.—*Sherry v. O'Brien*, 22 R. I. 319.

P. L., c. 662, § 13, grants plenary judicial power to boards of canvassers to determine all questions relating to the official ballot with power to reject all ballots, if objectionable.—*Cannon v. Board of Canvassers*, 24 R. I. 473.

Where the votes cast had been counted by the moderator, the result announced and the ballots sealed up and delivered to the state returning board, *mandamus* did not lie to compel the moderator to count a certain ballot in favor of petitioner.—*Corbett v. Naylor*, 25 R. I. 520.

Mandamus will not lie to review the action of a board of canvassers.—*Williams v. Champlin*, 26 R. I. 420.

Clerk.—The town clerks shall act as clerks of such boards in their respective towns, and shall produce to the said boards, in their respective towns, such returns, documents and records as may be required by them for the performance of their duties. *Ibid.*, S. 2.

Annual Meeting; Lists, How Made.—The boards of canvassers of the several towns shall hold a meeting on the Tuesday next after the first Monday in September in every year, and shall make out correct alphabetical lists:

First. Of all persons qualified, or who may become qualified, to vote generally, to wit: Of all person entitled to vote under article second, section first, of the constitution, and also of all persons who are or may be entitled by registry to vote in their respective towns; distinguishing the persons registered who are not entitled to vote under article second, section first, of the constitution.

Second. Separately from such lists, correct alphabetical lists of all persons entitled, or who may become entitled, to vote upon any proposition to impose a tax or to expend money in their respective towns, to wit: Of all persons entitled to vote under article second, section first, of the constitution, and of every person entitled, or who may become entitled, to vote by the payment of a tax assessed within the year preceding, upon his property in such town valued at least at one hundred and thirty-four dollars, or on whose property valued as aforesaid, a tax has been assessed and not paid; distinguishing in the said list, as hereinbefore provided, those who are not entitled to vote under article second, section first, of the constitution, and also those, so distinguished, who have not paid the taxes assessed as aforesaid. *Ibid.*, S. 3.

The canvassers merely determine whether the right to vote exists; they cannot grant or withhold it.—*State v. Congdon*, 14 R. I. 267.

Under P. L., c. 735, § 2, April 26, 1889, one not a citizen of the United States may register his name on the registry book of the town of his residence on or before the last day of December, *provided*, he can by naturalization become qualified to vote during the year.—*Ward v. Joslin*, 16 R. I. 661.

In preparing lists of voters for use at elections, canvassers are to see that the names of personal property owners who have not paid their taxes are omitted from the special lists of voters for common councilmen, and are

placed on the general list of voters for other civil officers.— *In Re Canvassers' Powers*, 17 R. I. 809.

Voting Lists Made and Posted.—The boards of canvassers shall also at said annual meeting on the Tuesday next after the first Monday in September canvass and make up the voting-lists for their respective towns; which said lists shall contain the alphabetical lists provided for in section 3 of this chapter and also the residence of each person thereon by street and number, so far as the same can be ascertained and described from the registry book mentioned in section one of chapter seven and from such other evidence as the several boards of canvassers may require in the case of any name on said lists. Said lists shall be, by the town clerks, printed and posted up in at least three public places in such towns as are not divided into voting-districts; and in towns divided into voting-districts said lists shall be posted up in at least three public places in the respective voting-districts at least twenty days before the Tuesday next after the first Monday in November. C. 8, S. 4.

Last Meeting.—The boards of canvassers shall hold their last meeting not more than seven nor less than three days preceding the Tuesday next after the first Monday in November in each year to further correct and add to the voting-lists for such towns, and shall also meet not more than seven nor less than three days prior to any other general or special election to further correct and add to such voting-lists. Town clerks, immediately upon issuing notices for any called town or district meeting, or for any special election shall notify the board of canvassers thereof. *Ibid.*, S. 5.

Lists in Voting-Districts.—Separate lists of the voters in each of the districts in any town which is or may be divided into voting-districts shall be made out by the town councils of such towns, and the lists for each district shall be posted up in one or more public places in each of the said districts, and in the town clerk's office. *Ibid.*, S. 7.

Correct Lists.—The boards of canvassers shall, at their several meetings, correct the lists, and add to the lists of voters the names of all persons qualified to vote whose names shall not be on the list of voters. *Ibid.*, S. 9.

Striking Off Names.—No name shall be stricken from the voting-list by any board of canvassers, unless proof shall be presented to said canvassers that such name is the name of a person not qualified to vote, or who may not be qualified according to the provisions of this title. *Ibid.*, S. 11.

Lists Delivered.—The list of voters so corrected shall be, by said board of canvassers, certified by their presiding officer, and on the same day delivered to the town clerks of their respective towns, to be de-

livered by said town clerks to the moderators of town meetings in their respective towns.

The town clerk of every town divided into districts for the purpose of voting shall send to the moderator of each of said districts a certified copy of the list for his district, before the time fixed for opening the district meetings for any election as aforesaid. *Ibid.*, SS. 12, 13.

Receive Evidence.—The boards of canvassers may, at any meeting holden for the purposes aforesaid, examine under oath the person whose right to vote is disputed, or any person present, and may receive any other evidence offered that such board may deem necessary, respecting the right of any person to have his name upon the registry, or to vote, and shall decide upon the same. *Ibid.*, S. 15.

Mandamus does not lie to compel a board of canvassers to place the relator's name on the list of voters.— *Weedon v. Town Council of Richmond*, 9 R. I. 128.

Boards of canvassers exercise judicial functions, and are to judge of the sufficiency of evidence, and in the absence of proof that they decided dishonestly or with a wilful purpose to deprive plaintiff of his rights, although their decision was precipitate and erroneous, it will be affirmed.— *Keenan v. Cook*, 12 R. I. 52.

A person who is taxed \$1.00 on personal or other property is not subject to the requirements of P. L., c. 633, § 2, and amendment by chap. 640, June 1, 1877, but is entitled to have his name put on the voting-list and to vote, if otherwise qualified he is registered according to law in force before the enactment of chaps. 633, 640.— *In re Registry Laws*, 12 R. I. 580.

Penalties for Neglect.—For any wilful neglect to deliver the lists of voters as required by law, every member of the board of canvassers, and every town and ward clerk, so wilfully neglecting, shall be fined not exceeding five hundred dollars.

Every person refusing to answer upon such examination shall be fined not less than twenty-five dollars, nor more than three hundred dollars, for such refusal.

If any board of canvassers shall, at any meeting holden for the purpose of correcting the lists of voters, as is hereinbefore provided, wilfully and fraudulently place the name of any person upon the list of voters, who is not entitled to vote, or shall wilfully and fraudulently reject and cause to be erased from said list the name of any person entitled to vote, every member of such board so offending, who shall concur in said offence, shall be fined not less than one hundred dollars nor more than five hundred dollars. *Ibid.*, SS. 14, 16, 17.

Liability.—The boards of canvassers, in case they shall have entered on said lists the names of all persons returned to them by said town clerks, shall not be held answerable for any omissions in said lists, nor for refusing to place on said lists the name of any person omitted in the lists to them delivered as aforesaid, unless at one of their said meetings they shall be furnished with sufficient evidence of such omission and of the qualifications as a voter of the person whose name is omitted. *Ibid.*, S. 18.

Records.—The town clerk shall record the votes of the members of the board of canvassers upon admitting or rejecting the name of any person from the list of voters whenever requested thereto by any member of said board, or by any qualified elector of said town present at the time of canvassing; a certified copy of which record shall be evidence of the facts therein stated; and for any wilful neglect on the part of said clerk to make said record whenever requested as aforesaid, he shall be fined not exceeding five hundred dollars. C. 8, S. 19.

Every clerk who shall at any time wilfully and fraudulently add a name to or erase a name from, any list of voters after the same has been corrected and certified, shall be fined one hundred dollars for every name so added or erased. *Ibid.*, S. 20.

Compensation.—The members of the boards of canvassers, and the clerks of such boards in the several towns shall be paid two dollars each, by their respective towns, for every day's attendance in the discharge of their duties; and the town clerks shall be paid, in addition, legal fees for making out and recording the several lists and returns in this chapter required. *Ibid.*, S. 21.

Cattle Diseases.—The town councils of the several towns may pass such ordinances as they may think proper, to prevent the spread of infectious or contagious diseases among cattle and other animals within their respective towns, and may prescribe penalties for the violation thereof, not exceeding twenty dollars for any one offence. C. 98, S. 2.

Corporations, Regulations.—The use and enjoyment of all rights and franchises granted under the provisions of this chapter shall be subject to such reasonable rules and regulations and orders as may be from time to time enacted by the town council. C. 77, S. 5.

Rights in Highways.—Any town by vote of the town council may pass ordinances or make contracts to be executed by its proper officers granting exclusive rights and franchises in, over, or under its streets and highways, to any corporation created by the general assembly of Rhode Island for the purpose of distributing water, or of producing, selling, and distributing currents of electricity for light, heat, or motive-power, or of manufacturing, selling, and distributing illuminating or heating gas, or of operating street railways, or of operating telephones, for a time not exceeding twenty-five years; *provided*, however, that such rights or franchises shall not be granted, in case any corporation or person duly authorized shall be in actual use and enjoyment of such rights, except to such corporation or person, and *provided further*, that in case more than one corporation shall at the time be in actual use and enjoyment of portions of the streets and highways for the purposes mentioned, no exclusive right or franchise shall be granted to either without the consent of the other, and that no such grant shall prevent any town from permitting any person or corporation to use the

streets or highways for any of such purposes in order to connect and serve any two or more estates owned by such person or corporation. *Ibid.*, SS. 1, 2.

Clerk.—The town clerk shall be clerk of the town council; but whenever any town clerk shall not appear at the time and place appointed for the meeting of the town council, the town council may appoint a clerk *pro tempore*, who, after being duly engaged, shall do and perform all the duties enjoined by law on the town clerk as clerk of the town council.

Whenever it shall satisfactorily appear to the town council that the town clerk is disqualified, from any cause whatsoever, to exercise and perform the several duties of said office, they may and shall appoint a town clerk *pro tempore*, who shall be duly qualified as aforesaid, and shall be authorized to perform all the duties of town clerk, until such disability of the town clerk is in the opinion of the town council removed, or until a town clerk shall be legally elected by the town. C. 40, SS. 10, 11.

Criminals, Rewards.—Every town council of any town may offer a suitable reward, not exceeding five hundred dollars in any one case, for the detention, apprehension and conviction of any offender committing a high crime or misdemeanor within the limits of such town, to be paid by the town treasurer upon the order of the town council, out of any funds of the town not otherwise specifically appropriated. *Ibid.*, S. 20.

Dams, Commissioner.—They may request the commissioner of dams to examine any dam or reservoir within the town whenever they shall have cause to believe that such dam or reservoir is unsafe. C. 124, S. 5.

Detectives, Private.—The town council of any town may license any citizen of their respective towns to act as a private detective throughout the state for the detection, prevention and punishment of crime, for the term of one year, unless his license be sooner revoked for cause. C. 106, S. 1.

Dogs, Ordinances Concerning.—Town councils of towns may make such ordinances concerning dogs in their towns as they shall deem expedient; to be enforced by the destruction of the animal or by pecuniary penalties not exceeding five dollars, to such use as such town council may prescribe. C. 111, S. 1.

Penalty for Neglect.—Every town council who shall wilfully neglect to perform any of the duties imposed upon them by the provisions of this chapter shall forfeit one hundred dollars for the use of any person who shall sue for the same. *Ibid.*, S. 18.

Taxation of Owners.—The town council may impose such yearly tax upon every person in their town for every dog owned or kept by him as

they shall judge proper; and also make such laws to prevent damage to sheep and cattle as they may deem necessary. *Ibid.*, S. 2.

Driftways Laid Out.—The town councils may lay out driftways in their respective towns in such places and of such widths as they shall think necessary, as fully as by law they are empowered to lay out highways.

Driftways shall be laid out in the same manner and under the same regulations in every respect as highways; the damage shall be ascertained in the same manner as in laying out highways. C. 71, SS. 8, 9.

In laying out driftways the width must be specified in the decree of the town council.—*Boston v. Providence R. R. Co. v. Lincoln*, 13 R. I. 705.

Elevators and Hoistways.—Town councils shall pass ordinances and adopt rules for the construction and operation of elevators and hoistways used for the carriage of persons or of merchandise, and fix the punishment of violations thereof by fine not exceeding five dollars per day for each day such violation continues. C. 40, S. 26.

Elections, State Senators and Representatives.—In towns divided into voting-districts the town councils shall proceed in open meeting, on the day following any election for senator and representatives in the general assembly, to count and tabulate the ballots given in in their respective towns for such officers. They shall declare the result of such counting and tabulating in open meeting. P. L., C. 828, S. 5.

New Elections.—If no election shall have been made of senator and representatives in the general assembly, or of any one or more of them, in any town, upon the day appointed by law for such election, the president of the town council of such town shall immediately after the declaration of the result as above provided issue a warrant to the moderator of such town or of each voting-district in such town, which shall be served on the same day by the town sergeant or a constable, announcing therein the result and directing the election to proceed on the day of adjournment; and if upon that day there shall be no election of such officers, or of any one or more of them, like proceedings shall in all respects be had, and the election shall proceed on the day of the next adjournment. If an election of all such officers be had on the day appointed by law therefor or on the day of adjournment, the president of the town council shall issue his warrants to the several moderators as in case of no election, announcing therein the fact that the election is complete; whereupon the said adjourned district meeting shall not be held. *Ibid.*, S. 6.

Exhibitions.—They may grant a license for a term not exceeding one year, under such restrictions and regulations as they shall think proper, to the owner of any house, room, or hall in the town for the purpose of permitting exhibitions therein, which license shall be revocable at the pleasure of said town council. C. 40, S. 17.

Explosions and Blasting.—Town councils may make such rules and regulations respecting the use of explosives for blasting purposes within the limits of their towns, as they may deem necessary for public security. *Ibid.*, S. 28.

Explosives, Ordinances governing Sale.—Town councils may from time to time make and ordain all ordinances and regulations for their respective towns, not repugnant to law, which they may deem necessary for the safety of their inhabitants from the manufacture, storage, keeping, having in possession, transportation, sale, or use of gunpowder, gun-cotton, dynamite, nitro-glycerine, nitro-gelatine, lyddite, chlorate of potash, picric acid, sodium, calcium carbide, acetylene gas, gasolene gas, and any and all other explosives and explosive chemicals; and may prohibit the manufacture, storage, keeping, having in possession, transportation, sale, or use by any and all person or persons of any or all said substances and gases in their respective towns, unless a license for the same shall be first obtained from the town council, which license shall be for the term of one year from the date thereof unless sooner revoked by order of said town council. *Ibid.*, S. 40.

Firearms and Fireworks.—The town council of any town may grant special licenses to persons to make bonfires in any public street, road, square, or lane, and to sell and set off rockets, crackers, squibs, or other fireworks, for the purpose of exhibition on suitable occasions. C. 110, SS. 2, 4.

Fire Inquests.—Any town council may request of any fire-marshal in the state his services to make such investigation and examination within such town of the matters authorized by this chapter to be investigated and examined, and upon such request such fire-marshal may exercise all the powers and perform all the duties conferred or authorized by this chapter within such town with the same effect as if such fire-marshal were duly elected or appointed fire-marshal by said town council and duly qualified under such election or appointment. *Ibid.*, S. 15.

They shall fix the manner and amount of compensation for fire-marshals in their respective towns, and for such services as may be rendered in such town by any request to make investigation and examination as aforesaid. *Ibid.*, S. 16.

Guide-boards.—The several town councils shall from time to time determine the corners and angles of all roads in their respective towns at which it will be necessary to erect and maintain guide-posts, and shall keep a record of their decision among the records of their proceedings. C. 74, S. 7.

They shall cause to be erected and maintained, at the several corners and angles so determined, substantial guide-posts with boards legibly painted to indicate the name and direction of the next town, or noted

town or place, as may be judged most expedient, for the direction of travellers. *Ibid.*, S. 8.

Every town council which shall neglect or refuse to perform the duties above prescribed, shall be fined five dollars for every month they shall so neglect or refuse. *Ibid.*, S. 11.

Forfeiture, Suit for Penalty.—Whenever any penalty or forfeiture or any part thereof, shall be given to any town by any penal statute, the town council may sue therefor in the name of the town, which shall be entitled to the benefit thereof, and the town council may remit the whole of such penalty or forfeiture. C. 288, S. 9.

The statute does not apply to fines of upwards of twenty dollars, which are recoverable by indictment.—*State v. Slocum*, 9 R. I. 373.

Hall Doors, etc., Regulation.—Town councils shall make and establish such ordinances, by-laws and regulations in relation to the construction of doors, stairways and entrances to buildings, lecture rooms and halls used for public amusements, lectures, or addresses and their use as they may judge the public safety requires; and affix penalties for violation thereof of not less than one hundred nor more than five hundred dollars for any one offence. C. 40, S. 25.

Health-Boards.—The several town councils shall be *ex officio* boards of health in their respective towns, and may make such rules and regulations, not repugnant to law, as they shall judge proper, for the preservation of the health of the inhabitants thereof, the prevention and abatement of nuisances, the promotion of cleanliness, the removal of the causes and the prevention of the introduction and spread of any contagious or infectious disease therein; either by removing the inhabitants of their respective towns, or forbidding or regulating ingress or egress of persons to and from the same, or any parts thereof, or otherwise; and in case of seaport towns, by making rules and regulations respecting quarantine. The town council of any town may establish such regulations as they may deem proper in reference to cattle or other animals coming from without this state by railroad, for the health and safety of such cattle and other animals, for preventing the obstruction of the public highways by them, for the safety of the people who may have occasion to use such highways, and with reference to the slaughtering or selling such cattle or other animals, or the flesh thereof, for human food, within the limits of their town. *Ibid.*, S. 13.

Penalties.—They shall affix penalties for the breach of such rules and regulations by them made as boards of health, not exceeding three hundred dollars fine, or six months imprisonment, for any one offence, unless otherwise provided by law. *Ibid.*, S. 14.

A statute in the interest of public health, P. L., c. 777, amended c. 1407, 1895, upheld, authorizing the board of aldermen of Providence to compel any abutting owner or occupant of land upon any street in that city in which there is a sewer, to connect the drainage of his land and premises with such

sewer, and to direct such owner or occupant to destroy any cess-pool, privy vault, or other arrangement for the reception of drainage.—*Harrington v. Board of Aldermen*, 20 R. I. 233.

Health-Officer, Duties.—There shall be appointed in every town, by the town council thereof, a health-officer who shall perform the duties of said office for one year and until his successor has been appointed and qualified: *Provided, however*, that the said town council may remove him at any legal meeting of said council after notice to such officer. C. 91, S. 5.

The cities of Providence and Newport and such other towns as may establish a board of health or elect a superintendent of health, shall be exempt from the provisions of section five of this chapter. *Ibid.*, S. 7.

The health-officer shall be the agent of the town council for making all sanitary inspections, and shall from time to time report to the town council the result of his inquiries. He shall perform the duties of health-officer in seaport towns as set forth in chapter ninety-five. He may make complaint, without giving surety for costs, in all cases of violation of any law, ordinance, rule or regulation relating to the public health in his town. In cases of emergency, when the council cannot be conveniently convened, he shall have all the authority conferred by the preceding sections of this chapter upon town councils; but he shall within two days report in writing his action in each case to the clerk of the town council, who shall bring the matter before the town council at its next meeting for its action. *Ibid.*, S. 6.

HIGHWAYS AND BRIDGES.

Grade Crossings.—If the town council of any town wherein a turnpike or highway crossed by a railroad on a level therewith is situated, are of the opinion that it is necessary for the security of the public that the turnpike or highway should be raised or lowered, so as to pass over or under the railroad, they may in writing request the corporation owning the railroad so to raise or lower such turnpike or highway. If the corporation shall neglect or refuse so to do, the town council may apply to the railroad commissioner to decide upon the reasonableness of the request. C. 187, S. 44.

Laying Out.—The town councils of the several towns may order highways to be laid out so far and through such part of their respective towns as they may judge necessary. C. 71, S. 1.

In a decree of a board of aldermen laying out a highway their judgment therein that "public convenience requires" the laying out of the highway, is equivalent to finding that the highway is "necessary" in the sense required by the statute.—*Hunter v. Newport*, 5 R. I. 325.

On an appeal from an order of a town council, after the verdict but before judgment, the council passed an order discontinuing proceedings, which order was afterwards revoked. *Held*, that the resolution had no effect.—*Hazard v. Middletown*, 12 R. I. 227.

A town council in its decree declaring a highway necessary, and appointing

a committee to lay out, need not specify the width of the proposed highway, but must specify the width of driftways to be laid out, or existing highways widened or declared such after twenty years' use.—*Boston & Providence R. R. v. Lincoln*, 13 R. I. 705.

Committee to Mark Out.—For the due marking out of any highway the town council shall appoint three suitable and indifferent men, not interested or concerned in the land through which such highway is to pass, who shall be engaged to the faithful discharge of their trust. C. 71, S. 2.

It is no objection to the vote of a town council that it prescribes the precise course a new highway shall pursue. *Provided*, that it requires the committee to lay it out to do so "in such a manner as may be the most advantageous to the public and as little as may be to the injury of the owners of land through which it passes."—*Watson v. So. Kingstown*, 5 R. I. 562.

Petitioners for the lay-out of a highway are not "indifferent" men, and therefore cannot act as committeemen to mark out the highway.—*Anthony v. So. Kensington*, 13 R. I. 129.

A committee is bound to make a reasonable effort to find an owner and to agree with him in regard to the lay-out of a highway; and the reasons for their inability to agree ought to be stated in their report. The word "owner" includes all persons who have an interest of record in the land over which the highway is laid.—*McCotter v. Town Council*, 21 R. I. 43.

Commissioners appointed under c. 71, § 2, G. L., to lay out highways are not public officers, and *quo warranto* is not available to determine their title to the office.—*Adams v. McCaughey*, 21 R. I. 341.

Mode of Procedure.—Said three men, after being engaged, shall go to the place where such highway is ordered to begin, and from thence proceed to survey, bound and mark out a highway conformably to the direction of the town council; and they shall take care to lay it in such a manner as may be most advantageous to the public, and as little as may be to the injury of the owners of land through which it passes. The town council may appoint the town sergeant or a constable to accompany the men named to lay out such highway, if in their opinion it is necessary. *Ibid.*, S. 3.

The town council may order the precise course which a new highway shall pursue, *Provided*, that the committee appointed to survey, bound and mark it, are left to lay it out in accordance with the provisions of the statute.—*Watson v. Town Council*, 5 R. I. 562; *Boston & Providence R. R. Co. v. Lincoln*, 13 R. I. 705.

Damages Settled.—They shall also agree with the owners of the land over which such way is laid out, for the damage they shall sustain, if any, by means of such highway passing through their land; and in case they cannot agree with the owners, the town council shall value and appraise the damage, if any, caused by such highway passing through their land. *Ibid.*, S. 4.

The absence of the justice of the peace and constable does not affect the validity of a committee's action. On appeal evidence may be introduced to show that the committee was not composed of suitable and indifferent men.—*Hazard v. Town Council*, 12 R. I. 227; *Watson v. Town Council*, 5 R. I. 562.

Report and Plat.—They shall, after having laid out said highway as aforesaid, cause a plat thereof to be made, which, together with a report

of their doings, in writing, by them signed, shall be by them presented to the town council. *Ibid.*, S. 5.

Notice to Parties Interested.—The town council thereupon shall cause notice to be given to all persons interested in the land through which such highway is laid, to appear before them, if they see fit, and be heard for and against receiving the report; notice to persons interested as aforesaid living without the state shall be given by advertisement, three weeks successively, in some newspaper published within the state, and, where their residence is known, also by letter, post-paid, duly mailed to them by the council clerk. *Ibid.*, S. 6.

The statute does not require in the preliminary decree of the council any description of the highway further than a definition as near as reasonably may be, of the two terminal points. The width need not be specified, except for driftways or existing highways when widened, or declared such after twenty years' use.—*Boston & Providence R. R. Co. v. Lincoln*, 13 R. I. 705.

Presentation by a landowner of a claim for damages for opening a public way to the mayor and board of aldermen of a city, held not a compliance with the statute.—*Whalen v. Bates*, 19 R. I. 274.

Action on Report.—The council shall, after hearing the persons appearing to be heard, proceed to receive or reject the report as to them shall appear just and right; and if the report be approved and received, they shall cause the same to be recorded, and the highway to be established and laid open by removing all buildings, fences and other impediments therein, which shall be done by the town sergeant or constable of the town under a warrant from the town council to him directed for that purpose. *Ibid.*, S. 7.

A vote declaring one street, among a number embraced in a report, a public highway was void, the report not being accepted as a whole.—*Simmons v. Mumford*, 2 R. I. 172.

Where a board of aldermen adjudged that public convenience required a highway with certain defined termini, and appointed a committee to mark out the same, the board was not authorized to accept the report of the committee in part only and thereupon lay out the highway with one of its termini variant from that originally ordered.—*Clarke v. Newport*, 5 R. I. 333.

In opening a new highway or amending an old one the town sergeant or surveyor may remove growing trees or brushwood from the space appropriated, but has no right, as included within the original assessment of damages, or the easement of the public, to use such trees or brushwood in building or mending the roadway; and if he does use them, he becomes a trespasser.—*Tucker v. Eldred*, 6 R. I. 404.

Gates and Bars.—The town council may order and direct who shall be at the charge of maintaining gates and bars where any drift way shall be laid out, and also whether the same shall be furnished with gates or bars. *Ibid.*, S. 10.

Public from Use.—All lands which have been or shall be quietly, peaceably and actually used and improved and considered as public highways for the space of twenty years, and which shall be declared by the town council of the town wherein they lie to be public highways, shall be taken and considered as public highways to all intents and pur-

poses as fully and effectually as if the same had been regularly laid out, recorded and opened by the town council of the town where such lands may lie. C. 71, S. 18.

Notice Before Declaring.—Every town council, before they proceed to act under the provisions of the preceding section, shall give personal notice of their intention to all persons interested, or who may have any claim to the land over which such highway passes, as described in said section, if known to reside in this state, and if not known, or if known to reside without the state, then in the manner prescribed by section six of this chapter. *Ibid.*, S. 19.

Where a town council declares lands used as highways for twenty years to be public highways, the plats of such ways must be made part of the declaration.—*Simmons v. Providence*, 12 R. I. 8.

Appeals.—Every person aggrieved by such proceedings may appeal therefrom to the supreme court in the manner provided and required in section eleven of this chapter, whereupon like proceedings shall be had in all respects as is in sections eleven and twelve provided. *Ibid.*, S. 20.

Established by User; Platted.—In declaring lands which have been quietly, peaceably and actually used and improved and considered as public highways and streets for the space of twenty years, to be public highways as aforesaid, the town council of the town in which such lands lie shall determine, mark out, plat, or cause to be marked out and platted, the lands, in width as well as length, by such use and improvement appropriated as public highways, and declared as such, and shall cause said plats to be recorded; but nothing herein contained shall be so construed as to affect the requirements or provisions of the preceding section. *Ibid.*, S. 21.

Widened.—If any lands used and improved for twenty years and upwards as a public highway or street, shall not in the judgment of the town council be wide enough for the necessities or convenience of the public, the town council may proceed to widen the said highway in whole or in part pursuing, as to the portions so widened, the steps required by law for laying out new highways. *Ibid.*, S. 22.

When no Plat Has Been Made.—In case any lands have heretofore been declared to be a public highway under section 18 of this chapter, and no such plot was made and recorded, the town council may cause the lands appropriated by such declaration as a public highway, to be marked out, platted and recorded; in which case they shall give the notice and their proceedings shall be subject to appeal. *Ibid.*, S. 23.

Alteration and Discontinuance.—Town councils may mark out, re-lay, widen, straighten, or change the location of the whole of or any part of any highway or driftway, whether laid out by the state or otherwise, except the highways on both sides of the Woonasquatucket river directed to be laid out by Chapter 362 of the Public Laws, passed at the January

session of the general assembly in the year one thousand eight hundred sixty-one; and thereupon like proceedings shall be had in all respects, so far as the same are applicable, including appeals, as are provided in this chapter in case of taking land and ascertaining damages to the owners of lands taken in laying out or in case of abandonment of highways. *Ibid.*, S. 28.

Laid Out by General Assembly.—Town councils shall have like control of any highway or driftway laid out by the general assembly, and the town in which the same lies shall be subject to like duties and liabilities in relation thereto, as they respectively have or are subject to in case of highways laid out by a town council. *Ibid.*, S. 29.

Declared Useless; Revert to Owner.—Whenever, by the judgment of the town council of any town, a highway or driftway in said town, or any part of either, has ceased to be useful to the public, the town council of said town is authorized so to declare it by an order or decree which shall be final and conclusive; and thereupon the title of the land upon which such highway or driftway or part thereof existed shall revert to its owner, and the town shall be no longer liable to repair the same: *Provided, however*, that the said town council shall cause a sign to be placed at each end of such highway or driftway, having thereon the words "Not a public highway," and after the entry of the said order or decree shall also cause a notice thereof to be published in a newspaper published in the county in which the said land lies at least once each week for three successive weeks, and a further and personal notice shall be served upon every owner of land abutting upon that part of the highway or driftway which has been abandoned who is known to reside within this state; but nothing herein contained shall in any manner affect any private right of way over the land so adjudged to be useless as a highway or driftway, if such right had been acquired before the taking of such land for a highway or driftway. *Ibid.*, S. 30.

Abandonment; Damages to Owners.—The owners of land abutting upon a highway or driftway in any town shall be entitled, upon the abandonment of such highway or driftway, either wholly or in part, to receive compensation from the town for the damages, if any, sustained by them by reason of such abandonment; and the town council, whenever it abandons the whole or any part of a public highway or driftway, shall at the same time appraise and award such damages. P. L., C. 1106, S. 3.

Abandonment; Notice to Owners.—Every town council, before proceeding to abandon any highway or driftway or any part thereof, shall give notice to the owners of the lands abutting upon any part of such highway or driftway within the town to appear, if they see fit, and be heard for or against such abandonment, and as to the damage, if any, which they will sustain thereby. Such notice shall be given by adver-

tisement once a week for three successive weeks next prior to the meeting of the town council at which such abandonment is to be first considered, in some daily or weekly newspaper printed in English and published in the town; or, if there be no such newspaper published in the town, then in some such daily or weekly newspaper published in the nearest town in which such newspaper is published; and a further and personal notice shall be served upon every person known to reside within this state who is an owner of land abutting upon that part of such highway or driftway which it is proposed to abandon. *Ibid.*, S. 4.

A declaration by the town council that the portion of the highway including the bridge had ceased to be useful to the public is not conclusive of the fact so as to discharge the town from obligation to rebuild the bridge. The statute, conferring authority on town councils, makes such a declaration depend on the fact of uselessness of the highway to the public.—*State v. Cumberland*, 7 R. I. 75.

Where the land over which a highway was laid belonged to only one person, the abutting owners had no interest in proceedings for abandonment, and were not entitled to notice of the filing of the committee's report; or to be heard thereon.—*Attorney-General v. Sherry*, 20 R. I. 43.

Appeals, How Taken.—Every appeal taken from any order and decree of the town council under the provisions of this title shall be taken and proceeded with according to the provisions of chapter two hundred forty-eight with reference to appeals from town councils, except as provided in chapter two hundred thirty-three in cases where an appeal survives. C. 71, S. 31.

It is essential to the validity of an appeal from an order of a town council establishing a highway that the bond required by the statutes reach the town clerk within the time prescribed by law.—*McCotter v. Town Council*, 21 R. I. 425.

Laid Out by Commissioners.—Whenever the town council of any town hereinafter named, shall adjudge it to be necessary to lay out, enlarge, straighten, improve or alter any street or highway, or any part thereof, in said town, said council may cause the same to be done in the manner following: Whenever any lands shall be required for the purpose aforesaid, and the town council shall be of opinion that any estates will be specially benefited thereby, said council shall, after notice to all persons interested, which notice shall specify the time and place of the meeting of the council and the nature and extent of the intended improvement, and after hearing all said persons who desire to be heard in the matter, appoint not less than three nor more than five discreet and disinterested persons as commissioners of estimate and assessment, who may be residents and taxpayers in said town, and said council may at the same time determine that such portion of the damages occasioned by taking any real estate for said purpose, not exceeding three-fourths thereof, shall be assessed upon the owners of such estates as said commissioners shall find will be specially benefited by making the proposed

improvement, whether any part of such estates are taken for the improvement or not: *Provided*, that such owners shall not be assessed in any case beyond the amount that said commissioners shall consider their estates to be specially benefited thereby. Said commissioners before entering upon the duties of that office, shall be severally engaged to the faithful discharge of the trust and duties required of them. *Ibid.*, S. 32.

The town council passed a resolution declaring that it was desirable and necessary to lay out a new street from Chalkstone road southerly to Atwell's avenue, fifty feet wide, and application for appointment of commissioners to lay out the same was made after publication of notice. *Held*, that there was no proper adjudication by the town council, etc.—*In Matter of Mt. Pleasant Avenue*, 10 R. I. 320.

On receiving the report of a committee to lay out a highway, the town council ordered notice of a hearing thereon, afterwards rescinded the order, and ordered notice of a hearing on a later day, when the report was approved. *Held*, proper. *Clarke v. So. Kensington*, 18 R. I. 283.

Commissioners' Report; Notice.—The commissioners shall cause a survey and plat of the proposed alteration to be made, notify all persons interested, and, after making a just estimate of damages and benefits, shall report thereon to the town council without unnecessary delay. *Ibid.*, S. 34.

The town council shall, within fourteen days after the making of said report, cause personal notice to be served upon all persons named in said report, residing in the state, and shall also cause a copy of said notice to be published, as hereinafter provided, to the effect that such report has been filed in the clerk's office, and that any person aggrieved by said report must file, with the clerk of the common pleas division of the supreme court for the county where such town or city is situated, a notice in writing of his intention to claim a jury trial as provided in the next succeeding section of this chapter; and they shall also cause a copy of said report to be filed with the clerk of the said common pleas division of the supreme court. *Ibid.*, S. 35.

Claim for Jury Trial.—Any person aggrieved by the report of the commissioners shall within sixty days after the first publication of the notice of the filing of their report, file with the clerk of the common pleas division of the supreme court a notice in writing of his intention to claim a jury trial, and, failing in this, shall not be entitled to such trial. Any person filing a notice as aforesaid may have a trial by a jury before said court to determine the amount of damage and benefit to him to be apportioned. *Ibid.*, S. 36.

Improvement, Elect to Make.—The town council shall, within one hundred and twenty days after the first publication of notice required by section thirty-six, elect whether or not they will make said improvements, and the town council may, at any time before said election, discontinue all further proceedings relative thereto, but said town, upon said discon-

tinuance, shall be liable for all costs, fees and expenses which shall have accrued; and the court may enter judgment and issue execution therefor as to the costs accrued on said appeal. C. 71, S. 37.

Improvement, Publication of Notice.—The notice required by sections thirty-two, thirty-three, thirty-four and thirty-five of this chapter, in addition to the personal notice, shall be given by publishing the same once each week for two succeeding weeks in at least two newspapers such as the town council may order; and they shall also cause three or more copies of such notice to be posted in conspicuous public places on or near the place where the proposed improvements are to be made: *Provided, however*, that the first publication of the notice required by section thirty-five shall be made within fourteen days after the filing of said report. *Ibid.*, S. 43.

Commissioners' Compensation.—Said commissioners shall be entitled to receive for their services a reasonable compensation, to be allowed by the town council; and all sums reasonably expended for maps, plats and clerk-hire and other necessary expenses, shall be paid by said town. *Ibid.*, S. 44.

Under the Highway Act, P. S. c. 64, §§ 1-17, all the right which the town or city acquires in the land taken is an easement for the purposes of a highway; the title to the soil and all the profits thereof consistent with the easement remain with the owner. Under the Betterment Act, the municipality, upon its election to make the improvement, becomes seized of the land in trust for use as a public highway.—*R. I. Hospital Trust Co. v. Hayden* 20 R. I. 544.

Notice of a defect in a highway should describe the particular locality as well as the cause of the accident, with such reasonable certainty as would inform the officers of the town or city as to the time and place of the injury, and as to the character and nature of the defect that caused it, so as to aid them in investigating the question of liability of the town.—*Maloney v. Cook*, 21 R. I. 471.

A municipal corporation is liable in trespass for acts of its agents in entering upon private land without right by order of the town council for the purpose of laying out a highway.—*Hathaway v. Osborne*, 25 R. I. 249.

In a highway dedicated by an act of the general assembly, no right can be obtained either by nonuser or adverse possession. The dedication requires no acceptance.—*Knowles v. Knowles*, 25 R. I. 325.

Where an owner of land, prior to the lay-out of a public highway, had placed on record a plat upon which various streets were delineated, the purchasers of lots had acquired a right of way in the street, and the owner had sustained no damage by reason of the lay-out of a public way by the city. *Allaire v. Woonsocket*, 25 R. I. 414.

Public when Declared Such.—Whenever all buildings and impediments have been removed, by order of the town council, from the street or portion thereof taken and the same shall be open for public use, the town council shall declare the same, and it shall be, a public highway. *Ibid.*, S. 45.

The liability of a town to repair a highway may be proved by proof that it had been repaired and used by the town from time immemorial, the statutes not having changed the common law in that respect.—*State v. Cumberland*, 6 R. I. 496.

In declarations by town councils of lands used as highways for twenty years the plat referred to in section 21 must be made part of the declaration.—*Simmons v. Providence*, 12 R. I. 8.

Where lands had been used for twenty years in the manner described by the statute, the erection of a fence and gate by one who was not an owner was unimportant, and did not prevent the running of the statute of limitations.—*Goelet v. Newport*, 14 R. I. 295.

Towns Affected by Sections 32-46.—The preceding fourteen sections of this chapter shall apply only to the cities of Newport, Pawtucket, Woonsocket and Central Falls, and the towns of Lincoln, Cranston, Johnston, Warren, Bristol, Middletown, East Greenwich, East Providence, New Shoreham, Little Compton, Warwick, Cumberland, Barrington, Jamestown, North Providence and Westerly, South Kingstown, and the district of Narragansett. *Ibid.*, S. 46.

Repairs.—All highways, causeways, and bridges, except as hereinafter provided, within the bounds of any town, shall be kept in repair and amended, from time to time, so that the same may be safe and convenient for travelers with their teams, carts, and carriages, at all seasons of the year, at the proper charge and expense of the town, under the care and direction of the town council of such town. C. 72, S. 1.

Owners of abutting lands are not entitled to compensation for damages caused by changes in street grades. In fixing new grades the surveyor is bound to exercise a fair discretion, having regard to public convenience and private rights, and if he acts recklessly or maliciously and thereby injures any one, he will be personally liable.—*Rounds v. Mumford*, 2 R. I. 154.

A party injured by unreasonable delay of a city in building a sewer which causes him loss in his business obstructed thereby.—*Williams v. Tripp*, 11 R. I. 447.

If an object calculated to frighten horses be left in a highway and after reasonable notice is negligently permitted to remain there by the town charged with the repair of the highway, such town is liable for the injury sustained by a traveler whose horse is actually terrified by such object and runs away.—*Bennett v. Fifield*, 13 R. I. 139.

A town council appointed a committee to cause a road to be graded, gutters paved and curbed and a bridge to be built. *Held*, that the appointment of a committee was not an infringement of the duties and rights of the commissioner of highways.—*State v. White*, 16 R. I. 591.

The statutory duty of the city to keep its streets safe for travelers was not, as a matter of law, discharged by the mere fact that a lantern had been placed upon the obstruction previous to the accident, but it was for the jury to judge whether in view of all the circumstances, including the condition of the weather, the light was sufficient to protect travelers against injury from the obstruction.—*Sauthof v. Granger*, 19 R. I. 606; *Yeaw v. Williams*, 15 R. I. 20.

Towns are required to keep their highways safe and this requirement is not limited by the expenditure of a reasonable sum for this purpose.—*Stone v. Langworthy*, 20 R. I. 602.

An opening in the sidewalk of a public street, if properly constructed, is not a nuisance; but the person negligently using it will be responsible for the injuries that may result from such negligent use. A municipality having been sued for injuries and compelled to pay may have its action over against the person primarily responsible for the injuries.—*Pawtucket v. Bray*, 20 R. I. 17.

A bicycle rider cannot recover for a defect in a highway, which could not have caused injury to an ordinary traveler.—*Fox v. Clarke* 25 R. I. 515.

If the accident was caused by the failure of the municipality to properly refill the sewer trench, it was not entitled to any notice of the defect. *Hutchinson v. Clarke*, 26 R. I., 307.

Repairs, Appropriation for.— Each town at some regularly called meeting of the electors thereof who are entitled to vote upon any proposition to impose a tax, shall annually appropriate such sum of money as said electors shall deem necessary for the maintenance and repair of its highways and bridges, and the sum so appropriated shall be included in the sum to be raised by the annual tax levied and assessed by such town for town purposes. In case any town shall fail to make said appropriation the town council thereof shall make such expenditure upon the highways and bridges of said town as may be necessary to comply with the provisions of section one of this chapter. C. 72, S. 3.

Districts Fixed; Surveyors Elected.— The town council of each town shall divide the town into highway-districts not exceeding four in number, or shall constitute the entire town one highway-district, and shall annually elect one surveyor of highways for each such highway-district, and fix his compensation. Surveyors of highways so elected shall hold their offices until the next annual financial town meeting of such town and thereafter until their successors are elected. Vacancies occurring from any cause may be filled by the town council and the town council may remove from office any surveyor of highways elected by them at their pleasure. *Ibid.*, S. 2.

Work on, Allotment.— Town councils shall determine and allot the proportion of the annual appropriation for the maintenance and repair of highways and bridges, which shall be expended within the limits of each highway-district in their respective towns, and so much of said appropriation as shall be expended shall be expended under their care and direction, or under the care and direction of a committee or committees of their own members appointed by them for that purpose. They shall also fix the rate of compensation to be paid for men, teams, road-making, machinery and materials to be employed or used in their respective towns. *Ibid.*, S. 4.

Repairs by Contract.— Whenever any town council shall be of the opinion that it is preferable so to do, they may provide for the expenditure by contract of a portion or all of the money allotted to be expended in any one or more highway-districts; and if the work so done by contract shall extend into two or more highway-districts, they may determine what proportion of the cost thereof shall be paid from the money allotted to each of said highway-districts. All money so allotted and not expended by contract shall, when expended, be expended by the surveyor of highways of the district to which it was allotted. *Ibid.*, S. 5.

Special Appropriation.—Whenever any town shall make, in addition to its annual appropriation for the maintenance and repair of its highways and bridges, a special appropriation for the building or repair of any particular highway or bridge or other highway work, and shall not provide that such appropriation be expended by contract, the town council of such town shall determine whether the same shall be so expended. *Ibid* S. 6.

Water-courses.—No surveyor of highways shall cause any water-course in any highway to be so conveyed as to incommode any person's land, house, store, shop, or other building, or to obstruct any person in the prosecution of his business or occupation, without the consent or approbation of the town council of such town signified in writing to such surveyor. *Ibid.*, S. 15.

Any person who may consider himself aggrieved by such water-course may complain to the town council; and said council on receiving his complaint and examining into the circumstances of the same, shall, if they think reasonable, direct such surveyor to alter said water-course in such manner as they shall think proper. *Ibid.*, S. 16.

Culverts over Ditches.—Any person owning land adjoining a public highway may build such bridges or culverts over the ditches which may be made in such highway for the passage of water as may be necessary to render the passage from such land to such highway safe and convenient, and no such bridge or culvert shall be altered, removed, or disturbed by any person except under the direction of the town council of the town where the same may be situated, or of some person by them appointed for that purpose. *Ibid.*, S. 23.

A town is not liable to the owner of land abutting on a highway for injuries caused by surface water turned onto the land by reason of allowing a drain under the highway and the highway itself to remain out of repair.—*Murray v. Allen*, 20 R. I. 263.

While a city may not be liable for the incapacity of a sewer when constructed to serve the purpose then contemplated, if it subsequently changes grades in neighboring streets, and so overtaxes the capacity of the sewer that damage results to private property, the city may properly be held liable. *King v. Granger*, 21 R. I. 93.

Where a culvert was constructed by a municipal corporation to carry the water of a natural stream under a street, the only duty imposed on the municipality was to receive the water of the stream at the point where the culvert commenced. *Lynch v. Clarke*, 25 R. I. 495.

Where a city by the construction of a culvert collected surface water and discharged it over plaintiff's land it is liable for consequent damages, although the water was only such as would have found its way upon plaintiff's land by natural causes.—*Johnson v. White*, 26 R. I. 207.

Wall or Fence Undermined.—No surveyor of highways shall remove earth near to any wall or fence erected upon or without the limits of a highway so as to undermine or overthrow the same, unless it be absolutely necessary for the security or convenience of the public; and in that case the repairs shall be made under the supervision of the town council or of some person by them appointed. *Ibid.*, S. 24.

Grading.—Town councils may order highways or parts of highways to be graded within their respective towns, and whenever a grade for any highway shall be established the same shall not be changed but with the consent of the town council of the town in which it is located, nor without notice to the proprietors of lands abutting on said highway, which notice, if the proprietor resides within this state, shall be served five days before the passing of an order for such grade or change of grade, and if any of the proprietors reside without the state, notice shall be served upon them as provided by section six of chapter seventy-one. At the time and place named in said notice, the town council shall proceed to hear the parties, and to pass such order in reference to such grade, or change of grade, as they may think proper. C. 72, S. 28.

Since the passage of the act of March 9, 1859, a town is liable to an abutting owner for damages suffered by him from a change of grade which existed prior to that date, but not for establishing or working a grade where none existed before.—*Aldrich v. Providence*, 12 R. I. 241.

On August 1, 1864, it was voted in town meeting that the town council be requested to receive a turnpike; August 30 a deed was signed and sealed; September 9 the town council voted to receive the turnpike; October 7 the deed was acknowledged. *Held*, that the turnpike became a highway on September 9.

In 1872, the town council ordered the surveyor to grade a street, which was done in 1880. *Held*, that the grade worked in 1880 was the first legal and actual grade.—*Gardiner v. Town Council*, 16 R. I. 94.

Sidewalks Established.—Whenever any highway is graded, or the grade thereof is changed, the town council may order sidewalks therein to be established, and such sidewalks to be curbed, upon like notice to the abutting proprietors of lands as is provided in the preceding section. *Ibid.*, S. 29.

Grading, Claim of Injury.—Whenever any abutting owner shall deem himself to be injured by any change in the grade of a highway, and such owner shall make claim for compensation for such injury to the town council within forty days after such change of grade shall have been completed, the town council shall appoint three suitable and indifferent men, not interested in the lands bordering on the highway the grade of which has been changed, who shall be engaged to the faithful discharge of their duties, and who shall go upon the highway when the grade thereof has been changed, and examine the same, and the estate alleged to have been injured by changing the grade of said highway, and endeavor to agree with the owner of such estate as to the amount of damage by him sustained by means of such change of grade, and if they agree with the owner they shall reduce such agreement to writing and report the same to the town council, which report shall be binding upon such owner and upon the town; but if they fail to agree with the owner as to such damage, they shall report such failure to the town council, whereupon the council, after notice to such owner and offering him an opportunity to be heard, shall proceed to

appraise the damage done to such owner by means of such change of grade. *Ibid.*, S. 32.

An appeal can be taken only from action by the council on the report of the committee, where the owner and the committee have failed to agree and the committee report the fact.— *Whittier v. Town Council*, 10 R. I. 266.

A tenant for life or years or from year to year is an "owner" within the meaning of the statutes, which give compensation to abutting owners for damages caused by changes of grade in highways.— *Gilligan v. Aldermen*, 11 R. I. 258.

Plaintiff's right of action did not arise from the mere change of grade, but from the injury done to his estate by the change.— *Inman v. Tripp*, *Ibid.* 520.

Mandamus will lie to compel a board of aldermen of a city to appoint three suitable and indifferent men to endeavor to agree with one who has suffered damage by a change of grade. Grading a highway involves something more than fitting it for travel.— *Aldrich v. Board of Aldermen*, 12 R. I. 241.

If the claim be not made within forty days the claimant's remedy is lost. The town council cannot extend the statutory time of forty days.— *Anness v. Providence*, 13 R. I. 17.

Private Way, Defining Grade.— Whenever in any town any person or persons owning land abutting on any platted street or way, which is not a public highway, the plat of which is recorded in the office of the clerk of the town in which such land is situated, shall petition the town council of such town to cause the grade of any such street or way to be defined, said town council shall appoint three discreet and disinterested persons, residents and taxpayers of said town, commissioners to define the grade of such street or way; which commissioners, before entering upon the duties of their office, shall be engaged to the faithful discharge of the said trust.

The town council thereupon shall cause such notice as said council may deem best to be given to all the owners of land abutting on said street or way, to appear before said council at the time named in such notice, if they shall see fit, and be heard for or against receiving said report.

The town council shall, after hearing the persons appearing to be heard, proceed to reject, confirm or recommit the report of the commissioners in whole or in part, to the same or new commissioners, to be appointed by said town council for that purpose, who shall revise said report and make return thereof without delay to said town council; whereupon said town council shall reject or confirm, or again recommit the same in manner as aforesaid, as right and justice shall require. And if said report shall be confirmed, said town council shall cause the same, together with the profile-plat accompanying said report, to be recorded. *Ibid.*, SS. 37-39.

Compensation of Commissioners; Assessments.— The commissioners shall be entitled to a reasonable compensation for their services, and for all sums of money expended for the profile-plat and other necessary disbursements, to be allowed by the town council, whether their report be rejected, confirmed or recommitted, to be paid by the petitioners, the amount of which shall be equally apportioned and assessed to such

petitioners by the assessors of taxes; and unless paid forthwith by said petitioners, shall be added to the taxes assessed against the real estate abutting on said platted street or way belonging to said petitioners, and the petitioners owning the same, at the next annual assessment of taxes; and shall be and remain a lien upon such real estate until it is paid, and shall be collected at the same time and in the same manner as the other taxes assessed against said petitioners, except in cases where said petitioners are non-residents of this state or of the United States, in which cases one year in addition shall be allowed for the payment of the same. *Ibid.*, S. 41.

State Roads.—By an act of the General Assembly passed in 1902, a state board of public roads was created with authority to construct state roads under conditions prescribed by the act. All roads improved or constructed under the provisions of this act are to be known as state roads, and are required to be kept in good repair from the time of such construction and improvement at the expense of the state, under the supervision of the state board. The towns are required at their own expense to keep such roads within their limits sufficiently clear of snow and ice so the same shall be reasonably safe for travel as required by law, and are further required to notify forthwith in writing the state board of public roads or its employees of any defect or want of repair of such roads. Acts of 1902, C. 982.

Waterpipes.—The town council of any town may grant to any person or corporation the right to lay waterpipes in any of the public highways of the town for supplying the inhabitants with water, and may consent to the erection, construction, and the right to maintain a reservoir, or reservoirs in said town, and to exempt such pipes and reservoirs and the land and works connected therewith from taxation. *Ibid.*, S. 37.

The exemption from taxes contemplated by the statute does not apply to pipes already laid and reservoirs already constructed.—*Bowen v. Newell*, 16 R. I. 238.

Infectious Diseases.—The town council are charged with the duty of protecting the town from the spread of small-pox and other infectious and contagious diseases, and to that end are clothed with large discretion and ample powers. C. 94, SS. 15-29.

Householders to Report.—Every householder or person shall immediately inform the town council of the town wherein he dwells of any person in the house or tenement occupied by him who has been taken sick of the small-pox, or any other contagious or infectious distemper, or suspected to be so. *Ibid.*, S. 13.

Infected Vessels.—No vessel having on board any person sick of the small-pox or any other contagious or infectious disease, or which has had such a person on board during its passage, or which has come from

any port or place usually infected with any such disease, shall be brought to anchor within one mile from any public ferry, pier, or landing-place, nor shall any person be permitted to go on board such vessel, without a license first obtained from the town council of the town where such vessel shall arrive. *Ibid.*, S. 1.

Persons Coming Ashore.—If any person shall come on shore from on board such vessel without a license first had and obtained, the town council may send back such offender immediately on board such vessel, or confine him on shore in such convenient place as to them shall appear most effectual to prevent the spreading of such infection. *Ibid.*, S. 3.

Inspector Sent on Board.—The town council where such vessel shall arrive shall send a physician or other suitable person to examine into and make report to them of the true state of the vessel and of the people on board; and they shall forthwith put on board the vessel some suitable person or persons to secure said vessel and effectually prevent any communication therewith, all at the charge of the master or owner thereof. *Ibid.*, S. 4.

Confine Persons on Board.—The town council shall confine on board such vessel, or send to some hospital or other suitable place, all persons who came in the vessel until such of them as have, or are likely to have the smallpox or other infectious or contagious distemper, are perfectly recovered and cleansed from said distemper, or have passed a suitable quarantine; and also all persons who have gone on board said vessel without license as aforesaid at the charge of such persons. *Ibid.*, S. 5.

Goods on Board.—The town council shall appoint suitable persons to take effectual care that all goods, wares, and merchandise imported in such vessel, which they think may hold and communicate the infection or contagion, are landed in some suitable place and cleansed in the manner by them directed before they are brought into any house, shop, or warehouse other than that in which they are cleansed. *Ibid.*, S. 6.

Inspectors' Charges.—The town councils of the respective towns shall fix, settle and adjust all wages and charges demanded by persons employed by them to secure such vessel, or to air and cleanse such goods, or to attend upon and nurse such persons as aforesaid. *Ibid.*, S. 10.

Examine Suspected Persons.—The town council in any town may appoint proper persons at all ferries or places where to them it may seem necessary to examine on oath all persons suspected of violating the provisions of section eleven, and on reasonable cause of suspicion, may bring such offenders before some magistrate, that they may be dealt with according to law. *Ibid.*, S. 12.

Intelligence Offices.—Town councils may license suitable persons as keepers of intelligence offices for the purpose of obtaining or giving information concerning places of employment of domestics, servants, or other laborers, except seamen, or for the purpose of procuring or giving information concerning such person for or to employers, or for the purpose of procuring or giving information concerning employment in business; and may fix the amount to be paid for such licenses; and may revoke such licenses at pleasure. C. 40, S. 18.

Intemperance, Suppression of.—Chapter 102 of the General Laws as amended by chapters 543 and 852 of the Public Laws, vests in the town councils of the several towns and the commissioners elected and to be elected by them, power to control the manufacture and sale of intoxicating liquors within the state. Such liquors, as defined by the statute, cannot be manufactured or sold within the state without a license from the authorities mentioned, and highly drastic measures are prescribed for the punishment of offenders against the law. For the specific provisions governing the matter the reader is referred to the statutes above named.

Intoxication.—The several towns and cities in this state are authorized and empowered to make ordinances not repugnant to the constitution and laws of this state or of the United States, to prevent and punish indecent intoxication, and to impose penalties for their violation not exceeding ten days' imprisonment nor twenty dollars fine for each offence. C. 40, S. 23.

JURORS.

Persons Liable.—With certain exceptions specified in the statute (C. 227, S. 3), all persons over twenty-five years of age who are qualified to vote upon any proposition to impose a tax or for the expenditure of money, in any town, are liable to serve as jurors. C. 227, S. 1.

In a case in which a city was a party, taxpayers were rightfully excused as not competent to sit as jurors.—*Watson v. Tripp*, 11 R. I. 98.

A grand juror held incompetent because not qualified to vote on any proposition to impose a tax, etc., etc.—*State v. Davis*, 12 R. I. 492.

The fact that a board of canvassers has listed a man as qualified to vote on any proposition to impose a tax, etc., is not conclusive evidence that he is qualified to serve as a grand juror.—*State v. Congdon*, 14 R. I. 267.

A committee of two was directed by a board of aldermen to prepare a jury list. They reported and their report was adopted. *Held*, that in the absence of proof to the contrary, it was to be inferred that the board of aldermen complied with the requirements of the statute as to the selection of a list of qualified jurors.—*State v. Board of Aldermen*, 18 R. I. 381.

Number in Different Counties.—The number of grand and petit jurors to be drawn in the different counties, and the quota required from each town, are fixed by statute. *Ibid.*, SS. 13-17.

Lists; Qualifications.—The town council of each town shall, in the month of April in every year, make a list of all such persons inhabiting

the town qualified to serve as jurors, not by law exempted, as they shall think well qualified to serve as jurors, being persons of good moral character, of sound judgment, and free from all exception; which list shall contain the name and occupation of each of said persons, and shall be kept on file by the clerk of such town in his office. *Ibid.*, S. 7.

If any town council shall neglect to make such list of persons in their town liable to do duty as jurors, every member of such council so neglecting shall be fined twenty dollars. *Ibid.*, S. 8.

Drawing, First Meeting.—The town council in each town shall in each year, after the fifteenth day of June and before the third Monday of July, and thereafterwards during the year and before the following fifteenth day of June, as often as may be necessary to carry out the provisions of this chapter, hold a meeting for the purpose of drawing grand and petit jurors. The names of all remaining persons on said lists shall be written on separate pieces of paper and placed in a box provided for that purpose by each town, which box shall be kept locked by the town clerk in his possession. And at such meetings the town councils shall draw from said box the names of persons to serve as grand jurors and as petit jurors for said division in said county as hereinafter provided. The drawing shall be by lot and by the presiding officer of the town council, who shall read aloud each name as drawn, and immediately pass the piece of paper containing such name to the other members of the town council to be read aloud by each of them, and the town council shall not excuse from serving any legally qualified person whose name is drawn. *Ibid.*, S. 12.

Drawing, Special Meetings.—Other meetings of the town councils shall be held in all towns in any county in any year, for the purpose of drawing additional grand or petit jurors for said division whenever the clerk of the common pleas division shall, under the order of any justice thereof, notify the town clerks of the several towns in the county that such meetings are required, and at such meetings there shall be drawn such additional number of persons as such justice shall prescribe in such order: *Provided*, that as nearly as practicable the same shall be drawn in the same proportionate numbers from the several towns as is provided for the drawing at the meeting to be held between the fifteenth day of June and the third Monday of July in each year. *Ibid.*, S. 18.

Names Recorded and Returned.—The names drawn at any meeting for drawing jurors shall immediately be entered on a book which shall be kept by the town clerk for that purpose, the grand and petit jurors being kept separate, in the presence of the town council, who shall attest the correctness of the list as entered with their signatures, and the town clerk shall at once send a list of said names to the clerk of the common pleas division in the county. *Ibid.*, S. 19.

See "Town Clerk."

Measures, Illegal; Seizure.—The town council may appoint persons to seize all baskets not sealed or not of the lawful dimensions, and to prosecute persons violating the laws defining the size of such baskets for measuring coal or wood. C. 149, S. 10.

Meetings, Regular.—Town councils in towns where the council has probate jurisdiction shall hold regular meetings for the transaction of council and probate business as often as once in each month at such time in the month and at such place within the town as the council shall by general order fix and determine. C. 40, S. 2.

NUISANCES.

Buildings, Declared to be Such.—All buildings, places or tenements used as houses of ill-fame, resorted to for prostitution, lewdness or for illegal gaming, and all grog-shops, tippling-shops, or buildings, places or tenements used for the illegal sale or keeping of intoxicating liquors, or where intemperate, idle, dissolute, noisy or disorderly persons are in the habit of resorting, are declared to be common nuisances. C. 92, S. 1.

The mere use of leasehold premises for the purposes prohibited by the statute does not *ipso facto* render the lease absolutely void. The lessor alone can take advantage of the avoidance, at least unless he has been cognizant of the illegal use and consented to it.—*Almy v. Greene*, 13 R. I. 350; *Allen v. Keiley*, 18 R. I. 197.

In an indictment for keeping a common nuisance, evil intent need not be alleged.—*State v. Towler*, 13 R. I. 661.

An indictment held not multifarious which charged in one count that the accused "did keep and maintain a certain grog shop and tippling shop and building, place and tenement used for the illegal sale and the illegal keeping of intoxicating liquors and for the habitual resort of intemperate, idle, dissolute, noisy and disorderly persons, to the great damage and common nuisance of all good citizens of this state against the form of the statute."—*State v. Brady*, 16 R. I. 51.

The illegal sale of liquors containing more than two per centum by weight of alcohol made the building used for such sale a common nuisance.—*State v. Hughes*, 16 R. I. 403.

Nuisances, Abatement.—The town councils of the several towns may pass such ordinances, not inconsistent with this chapter as they may deem most effectual for the prevention, suppression or abatement of any such nuisance as is described in section one of this chapter, or the said town councils may remove or cause to be removed such nuisance in the manner provided for the removal of other nuisances. *Ibid.*, S. 6.

Removal.—The town council of any town may order the owner or occupant of any premises in such town to remove at his own expense any nuisance, source of filth, filth, or cause of sickness found thereon, within twenty-four hours, or such other time as the council may deem reasonable after service of notice. C. 91, S. 1.

If the owner or occupant fails to comply with such order, the town council may cause the nuisance, source of filth, filth, or cause of sickness, to be removed at the expense of the owner or occupant of the premises. *Ibid.*, S. 3.

Power to Regulate.—The town council of a town may make such rules and regulations as they shall deem necessary to regulate and control the construction and location of all places for keeping swine, privy-vaults, sinks, sink-drains, sink-spouts, cess-pools and the outlets thereof, and provide for the summary removal or reconstruction of all such as they shall deem prejudicial to the public health; and may make rules prescribing the location of stables and the time and manner of removing manures therefrom, or from privy-vaults, or slaughter-houses, and for the driving of animals through the highways of the town. *Ibid.*, S. 20.

Dwelling-Places Cleansed.—The town council, when satisfied that any cellar, rooms, tenement, or building in its town occupied as a dwelling-place, has become, by reason of the number of occupants or want of cleanliness, unfit for use as a dwelling-place and a cause of nuisance or sickness to the occupants, or to the public, may issue a notice in writing to the occupants, requiring the premises to be put in proper condition as to cleanliness or requiring the occupants to remove or quit the premises. If the person so notified or any of them neglect or refuse to comply with the terms of said notice, the town council may cause the premises to be properly cleansed at the expense of the owners or may remove the occupants by force and close up the premises; and the same shall not be again occupied as a dwelling-place without the consent and permission of the council. *Ibid.*, S. 4.

Feeding Swine.—No swine shall be kept in any town, to be fed on swill, offal, or other decaying substances, brought from any other town except in such place therein as shall be designated by the town council thereof. *Ibid.*, S. 14.

The intent of the statute was not to forbid a person living in one town to feed his swine on swill from any other town except in such places as shall be designated by the town council thereof. The purpose was to prohibit keeping swine to be so fed in places other than those designated for it.—*State v. McMahon*, 14 R. I. 285.

Boiling Bones, etc.—Whenever the town council of any town shall have designated and established therein a place in which the business of boiling bones, depositing filth, keeping swine, or slaughtering cattle or other animals may be carried on, every person who shall carry on such business in any other place shall be fined fifty dollars for each day on which he shall carry on the same. *Ibid.*, S. 12.

Fish Oil Works.—No person shall carry on the business of expressing oil from fish within any town except in such place therein as shall be designated by the town council thereof, provided that any town council may at any time withdraw such designation. *Ibid.*, S. 16.

If a licensee conduct the business in a negligent and improper manner and thereby creates a public nuisance, he may be prosecuted and punished therefor notwithstanding his license.—*State v. Barnes*, 20 R. I. 525.

Slaughtering Places.—The town councils of the several towns may designate and establish the place or places where the business of slaughtering cattle and other animals shall be carried on.

Whenever in the judgment of the town council the convenience or health of their town requires the withdrawal or suspension of the right of slaughtering provided for in the foregoing section, they may withdraw or suspend said right, first giving to the owner or occupant of the premises two months' notice in writing of their intention to withdraw or suspend the same. C. 91, SS. 8, 9.

Oaths Administered.—The town council of any town and each of the members thereof may administer oaths in any matter pending before the council, and may engage town officers upon their warrants or commissions, and a record shall be made or a certificate given, of such engagements. C. 40, S. 38.

Ordinances, Officers to Execute.—They may appoint all necessary officers for the execution of their said ordinances, by-laws and regulations; may define their duties, and fix their compensation, where provision shall not be made by law, and may remove any such officers at pleasure; but no expense of process, commitment or detention, under such ordinances and regulations, shall be chargeable to the state. *Ibid.*, S. 31.

Ordinances, Penalties Void when.—No ordinance or regulation made by a town council shall impose or at any time be construed to continue to impose any penalty for the commission or omission of any act punishable as a crime, misdemeanor, or offence by the statute law of the state. *Ibid.*, S. 29.

The ordinance of Providence prohibiting the opening of shops, etc., on Sunday is void because inconsistent with the laws of the state.—*Baxter, Petitioner*, 12 R. I. 13; *State v. McCulla*, 16 R. I. 196.

Ordinances Published.—All ordinances, by-laws and regulations shall be printed and published in such manner as the town council shall direct. *Ibid.*, S. 30.

Parks, Regulation.—Town councils may pass ordinances, by-laws and regulations in relation to the care, management and use of public parks, squares or grounds of their towns and prescribe punishment for the violation thereof by fine not exceeding twenty dollars and imprisonment not exceeding ten days for each offence. *Ibid.*, S. 24.

Paupers, Removal.—Upon complaint of the overseers of the poor that a person not being legally settled in the town is likely to become chargeable to the town, the town council, after due inquiry, may adjudge and determine to what town the pauper belongs within this state, or in which he was last legally settled; which being done, the town council shall make an order under their seal to be signed by their clerk, for the removal of such person to such town. C. 80, S. 13.

The town council shall cause all insane paupers detained in any town asylum, poorhouse, lock-up, or bridewell, unless in the opinion of the agent of state charities and corrections they are properly cared for, to be removed, within five days from the date of their commitment, to the state asylum for the insane. C. 82, S. 46.

More than one person may be included in the same order for the removal of persons adjudged likely to become chargeable to the place of their last legal settlement.—*Gloucester v. Smithfield*, 2 R. I. 30.

An order of removal of a pauper, made by the town council of a town and executed in conformity with the statute, if unappealed from, is conclusive.—*Tiverton v. Fall River*, 7 R. I. 182.

Pawnbrokers, License.—The town council of any town may grant licenses to suitable persons, residents of the state, under such conditions and regulations as they may think proper, to carry on the business of pawnbrokers within their respective towns for the term of one year at the place designated therein. C. 105, S. 1.

Police, Railroad and Steamboat.—The town council of a town, upon the petition of a railroad corporation having a passenger-station therein, or of a common carrier of passengers by water for hire having a usual place of receiving and discharging passengers therein, may appoint, under such regulations as such town council may from time to time adopt, as many as they may deem proper of the persons in the employment of said petitioner, as police officers, for the purposes and with the powers in this chapter set forth: *Provided*, that said appointment shall not extend beyond the period for which said town council are elected. C. 107, S. 1.

Police Regulations.—Town councils may from time to time make and ordain all ordinances and regulations for their respective towns, not repugnant to law, which they may deem necessary for the safety of their inhabitants from fire, firearms, fireworks, explosion of gunpowder from the quantity of or mode or place of storing the same; to prevent persons standing on any footwalk, sidewalk, doorstep, or in any doorway, or riding, driving, fastening or leaving any horse or other animal or any carriage, team or other vehicle on any such footwalk, sidewalk, doorstep or doorway within such town, to the obstruction, hindrance, delay, disturbance or annoyance of passers-by or of persons residing or doing business in the vicinity thereof; to regulate the putting up and maintenance of telegraph and other wires and the appurtenances thereof; to prevent the indecent exposure of any one bathing in any of the waters within their respective towns; against breakers of the Sabbath; against habitual drunkenness; to regulate the speed of driving horses and cattle over bridges; respecting the purchase and sale of merchandise or commodities within their respective towns; to protect burying-grounds and the graves therein from trespassers; and, generally, all other ordinances, regulations and by-laws for the well-ordering, managing and directing

of the prudential affairs and police of their respective towns, not repugnant to the constitution and laws of this state, or of the United States. C. 40, S. 21.

Penalties.—They may impose penalties for the violation of such ordinances and regulations, not exceeding in amount twenty dollars, or imprisonment not exceeding ten days in some jail or house of correction, for any one offence, unless other penalties therefor, or penalties within other limits, are specially prescribed by statute, to be prosecuted by some officer appointed for that purpose, and to be recovered to the use of the town, or of such person or persons and in such proportions, as they in their said ordinances and regulations shall designate. *Ibid.*, S. 22.

Probate Courts.—Unless otherwise provided, the town councils shall be probate courts within their respective towns; the major part of the members elected to be a quorum for doing business, and the major part of those present at any legal meeting to decide upon any matter before them. C. 209, S. 1.

Probate Judge Elected.—The town council of any town, which may at the annual meeting of said town, have delegated to its town council such power, shall elect a judge of probate for such town; and such judge of probate, upon being engaged, shall, instead of the town council, have the power and be subject to the duties of a probate court.

Whenever the judge of probate is a party or interested in any case arising in his town, or is absent or unable to perform his duties, the town council shall act. *Ibid.*, S. 3.

Quarantine Officer; Regulations.—The town council of each seaport town may appoint a health-officer for such town, who shall visit all vessels subject to examination or quarantine, carry into execution all regulations established by the town council, be at all times accountable to the council, and shall receive such compensation for his services as the council may allow. C. 95, S. 1.

They shall cause to be published in one or more newspapers published in the state, within or nearest the town, all rules and regulations made by them respecting quarantine. *Ibid.*, S. 2.

They shall prescribe from time to time the several ports, places or counties from which vessels arriving shall be subject to examination or quarantine. *Ibid.*, S. 3.

They shall designate the places where all ships or vessels subject to examination or quarantine shall come to anchor, define the limits of such quarantine ground, and assign the time for which such ships or vessels shall be detained and where and how unladen. *Ibid.*, S. 4.

They may appoint a sentinel to be stationed in some convenient place on shore or on some boat or vessel to hail all ships or vessels which may arrive in the river, bay, or harbor. *Ibid.*, S. 5.

In case a commander of a ship or vessel on being hailed and directed

by the sentinel shall neglect or refuse to bring his ship or vessel to anchor within the limits prescribed, he shall be fined and the town council may order such ship or vessel to be anchored on the quarantine ground, there to remain until legally discharged therefrom. *Ibid.*, SS. 6, 7.

Any person who shall leave any ship or vessel under order of quarantine without permission from the health-officer or town council of such town shall be fined; and the council may order such person to be returned on board of such vessel there to remain until said council order him to be dismissed. *Ibid.*, S. 8.

The powers vested in town councils and officers appointed by them are subject to those vested in the governor and the state board of health; and it shall be the duty of the town councils to require such officers to enforce all and singular the rules and regulations made by the state board of health. *Ibid.*, S. 16.

Shops, Closing of.—Town councils may pass such ordinances, by-laws, and regulations as they think proper in relation to the time of closing shops, saloons, and other places of resort in the evening, and may prescribe penalties for violation thereof not exceeding twenty dollars for each offence. C. 40, S. 27.

Shows, License or Forbid.—The town councils may license, regulate, and, if they shall find it expedient, prohibit and suppress theatrical performances, rope and wire dancing, and all other shows and performances in their respective towns, conforming to law. *Ibid.*, S. 15.

Street Railroads, Operation.—The town councils of the several towns shall have power, from time to time, to make such reasonable rules and regulations with reference to the rate of speed and mode of operation of railroads, in the streets and highways of their respective towns; such rules and regulations to receive the approval in writing of the railroad commissioner. C. 187, S. 17.

They shall have power to fix the character of paving, repaving, and repairing, from time to time, to be done by street railroad corporations. *Ibid.*, S. 18.

Where no appeal from the decision of a town council was provided for in the charter of a street railway, it was held that an appeal would not lie under the statute, c. 248, § 1, from an administrative order of the town council, which it had authority to pass.—*Pawcatuck Valley St. Ry. v. Town Council*, 22 R. I. 307.

Taverns, License.—The town council of every town shall have power to regulate the keeping of taverns, victualling houses, cook-shops, oyster-houses, and oyster-cellars therein, by granting licenses therefor, upon such compensation for the benefit of the town as they shall see fit to impose, or by refusing to grant them. C. 101, S. 1.

The town council of a town is not required to adopt any general regulation as to the granting of licenses for keeping taverns, victualling-houses, cook-

shops, oyster-houses, and oyster-cellars in the town. *State v. Barrett*, 20 R. I. 313.

Tax Remitted of Soldiers and Mariners.—The tax assessed upon or against any person who has performed military duty shall be remitted for the year in which he shall perform such duty; and said tax assessed against or upon any mariner for any year while he is at sea, or upon any person who by reason of extreme poverty is unable to pay said tax, shall, upon application of such mariner or person to the town council of the town wherein said tax was assessed, be remitted. C. 47, S. 4.

Town Clerk, Election Certified.—The president of the town council shall, as soon as may be after the election of a town clerk, send to the secretary of state a certificate of the election of such town clerk. C. 39, S. 7.

Truancy.—The town council of each town shall make all needful provisions and arrangements concerning habitual truants and children who are idle, not attending school and growing up in ignorance, and shall make such ordinances as will most conduce to the welfare of such children and to the good order of such town; and shall designate or provide suitable places for the confinement, discipline, and instruction of such children. C. 64, S. 11.

Turnpike and Toll-Bridge Corporations.—The town council shall cause notice to be given to all known parties owning land through which a turnpike road or toll-bridge passes in said town, to appear before them, if they see cause, and be heard for or against accepting the conveyance of such turnpike road or toll-bridge for a public highway by the town; personal notice to be given to parties residing in the town and notice to be given to parties residing without the town or the state as the town council may direct. C. 177, S. 37.

Unclaimed Estates.—Whenever any person shall die leaving any real or personal estate within this state, and shall leave no known heir or legal representative to claim the same, the town council of the town in which such estate may be, may direct the town treasurer of such town to take possession of the same for the use of the town until the heir or other legal representative of such person shall call for the same. C. 217, S. 1.

The town council may cite any person whom they may suspect of being possessed of the personal estate of any person dying without heirs as aforesaid to appear before them, and may examine the person so suspected on oath concerning the same. *Ibid.*, S. 3.

Vacancies Filled.—In case of vacancy in the office of any officer whom a town or town council is authorized to elect, the town council may elect a suitable person to fill such vacancy. C. 40, S. 9.

Voting-Machines, Adoption.—The town council of any town, in which an appropriation therefor has been made by the qualified electors

thereof, may adopt, purchase, and furnish for all elections in such town any voting-machine approved by the state returning-board in accordance with the provisions of this act; but all voting-machines so purchased, and all voting-machines purchased by the secretary of state under the provisions of Chapter 794 of the Public Laws, for any town, shall be of such size as to afford opportunity for voting in each column thereof for all officers who at the time of such purchase are required by law to be voted for at one time in such town, and for at least six additional officers. P. L., C. 859, S. 4.

Number.— In every city or town where voting-machines have been adopted, a sufficient number of such machines shall be purchased to enable all the electors of such city or town to vote by the use of such machines, and thereafter the election of all officers by the electors thereof and the voting upon all propositions or questions submitted to the electors thereof shall be done by the use of such machines, except as provided in this act: *Provided*, that the voting in annual or special town-meetings upon propositions to impose a tax or upon questions in voting the expenditure of money need not be so done.

At each voting-place where such voting-machines are used, at least one voting-machine shall be furnished for every five hundred qualified electors and for every fraction of five hundred qualified electors, in excess of one hundred, whose names are upon the voting-list used at such voting-place, and entitled to use such machine. *Ibid.*, SS. 5, 6.

Notice of Adoption.— The clerk of any town which adopts and purchases voting-machines in accordance with the provisions of this act shall forthwith notify the secretary of state of such adoption and purchase, and no such voting-machine shall be used in any election in any such town until thirty days thereafter. *Ibid.*, S. 7.

Method if Machines are not Ready.— In case the voting-machines, or any of them, required by law for use at any such voting-place are not in position and in working order at the time for opening the polls thereat, all voting at such voting-place upon that day shall be done in accordance with the provisions of law which would apply if the use of voting-machines had not been ordered. *Ibid.*, S. 12.

Conduct of Elections.— The use of voting-machines involves considerable changes in the method of conducting elections, the details of which are given in the act providing for their adoption and use.

The moderator and clerk are required to adjust the machines before the voting begins, and the machines during the time of voting are in charge of supervisors designated by the moderator. Two supervisors are required to oversee each machine.

At the close of the polls the moderator makes a record in ink in the record book of the number of electors who have voted in each machine as shown by its counter, removes the tally sheets, counts the votes given

in for each candidate and for and against each proposition or question, and declares the result in open meeting. *Ibid.*, SS. 22-33.

Secret Ballot Law in Force.— All provisions of law in relation to the conduct of elections and to the handling and disposition of ballots cast thereat, not inconsistent with the provisions of this act, shall apply to elections at which voting-machines are used and to the handling and disposition of the tally-sheets used in such machines. *Ibid.*, S. 34.

Voting Machines, Discontinuance.— The town council of any town where voting-machines have been or may hereafter be adopted may at any time not less than thirty days prior to any election order the discontinuance of said voting-machines for said election, and upon said order all voting in said town at said election shall be done in accordance with the provisions of law which would apply if the use of voting-machines had not been ordered in said town, *provided* that the town council making any such change shall notify the secretary of state of said change at least twenty-five days before said election is held. P. L., C. 916, S. 1.

The action of a town council under Pub. Laws, c. 744, § 1, was irrevocable and a final abandonment of the method of voting then in force and an adoption of the method of voting by voting-machines, and a town has no power to change its system of voting from the use of voting-machines to the method used prior to their adoption.—*The McTammany Voting Machine*, 23 R. I. 630.

Windmills, Location.— The town council of any town may remove all such windmills within their towns as are located, continued, or run contrary to the provisions of this chapter; and upon petition in writing to them presented, may authorize or continue the location of any mill in their discretion at any place within the limits of their respective towns. C. 125, SS. 3, 4.

The provisions of this chapter shall not apply to any mill which shall be located by decree of the town council of the town in which the same is situated, nor to any mill situated in the towns of New Shoreham, or Jamestown, nor to any patented wind-engine or mill. *Ibid.*, S. 5.

TOWN SERGEANT.

Election.— The town elects annually at the annual town meeting a town sergeant. In case of failure by the town to elect a sergeant, the town council chooses that officer. C. 39, SS. 1, 13.

Bad Fame, Persons.— Notice to such persons to remove from the town shall be served by the town sergeant or any constable of the town, by reading the same in the presence and hearing of such person or by leaving a true and attested copy thereof at his usual place of abode. C. 80, S. 26.

Children, Take and Detain.— The town sergeant of any town or the chief of police of any city may enter any place where any child may be

held, detained or employed in violation of this chapter, and without process of law seize and detain such child and hold him as a witness to testify upon the trial of any person charged with violating the provisions of this chapter; and if upon conviction of the offender no person shall appear who is entitled to the custody of such child, the officer having him in custody shall, under direction of the court, deliver him to the Children's Friend Society, the St. Aloysius Orphan Asylum, or the Association for the Benefit of Colored Children in the city of Providence, or the Home for Friendless Children in Newport, if said societies will receive him without cost to the state; or he may, with the approval of the overseer of the poor of the town, bind him to some suitable person who may be willing to receive him into his family, where he will be properly brought up, and in the event of his being unable to provide a suitable home for such child in either of the designated ways, the officer having him in charge shall deliver him to the overseer of the poor of the town to be cared for by him. C. 115, S. 6.

Dogs, Lists of Owners.—The town sergeant of each town, or such special constables as the town council may appoint, shall annually, in the month of April, ascertain and make a list of the owners or keepers of dogs in such town and return such list to the town clerk on or before the last day of May, and shall receive from the town treasury the sum of twenty cents for each dog so listed; and the town clerk shall, within two weeks thereafter, furnish to the town sergeant or to each special constable so appointed and sworn, a list of all dogs licensed for the current year and a list of those not licensed, with the names of the owners or keepers thereof. C. 111, S. 12.

Fighting, Prevention.—Every town sergeant, constable, or police officer shall arrest forthwith in any county any person violating any of the provisions of the law prohibiting fighting by prearrangement and shall detain such person until a warrant can be obtained for his arrest. C. 277, S. 15.

Growing Vegetables, Arrest Persons Removing.—Every town sergeant who shall discover any person or persons in the act of taking and carrying away any growing fruit or vegetables, shall arrest such person or persons and detain him or them in custody until a complaint can be made against him or them, and he or they be taken on a warrant issued upon such complaint, *provided* that such arrest and detention without a warrant shall not continue longer than the space of six hours. C. 279, S. 24.

Jurors, Summons Served.—The town sergeant or constable shall forthwith make service of the notifications received by him, upon the persons named therein as jurors, by delivering to each of such persons, or by leaving at their last and usual place of abode a notice substantially as given in the statute. C. 227, S. 22.

Such notification, when served, shall be returned by the officer serving the same to the clerk of the division for which said jurors were drawn. Such sergeant or constable shall be paid fifty cents out of the town treasury for warning each person. *Ibid.*, S. 23.

Nuisances, Notice to Remove.— Notice to remove any nuisance, source of filth, filth, or cause of sickness, shall be in writing, signed by the town clerk and served by any town sergeant by reading the same in the presence and hearing of the owner, occupant, or his authorized agent, or by leaving a copy of the order personally with or at the last and usual place of abode of the owner, occupant, or agent, if within this state. But if the premises are unoccupied, or the residence of the owner or agent is unknown or without the state, the notice may be served by posting a certified copy of the same on the premises, and by advertising in one or more newspapers in such manner and for such length of time as the town council may direct. C. 91, S. 2.

Paupers, Removal.— The town sergeant or constable who shall be charged with an order for the removal of any poor person may go into any town to enforce said order, and shall make return upon said order to the town council who granted the same, at their next meeting; which return shall be lodged in the clerk's office. C. 80, S. 19.

Every town sergeant or constable, who shall refuse or neglect to enforce such order when delivered to him, shall, for every such refusal or neglect, forfeit twenty dollars, to the use of the town. *Ibid.*, S. 20.

He shall be allowed and paid at the discretion of the town council for his trouble out of the treasury of the town from which such poor person shall be removed. *Ibid.*, S. 21.

Quarantine, Rules Enforced.— Every town sergeant shall carry the rules and regulations of the town council within his precinct into effect. C. 95, S. 11.

State Police, Duties as Member.— Town sergeants with sheriffs, constables, and other officers constitute the state police, and it is made their duty to see that the laws of the state are observed and enforced within their towns and to use their utmost efforts to repress and prevent crime by suppressing unlicensed liquor shops, gambling places, and houses of ill-fame, and shall do so at the request of any taxpayer of any town or city, and may command aid in the performance of such duty. C. 102, S. 17.

TRAMP OFFICERS.

See "Constables, Special."

TREASURER.

Election.— The town treasurer is chosen annually at the annual town meeting, to serve until the next annual election and thereafter until his successor is qualified to act.

In case of a vacancy in the office created by death, removal out of town, resignation, or by neglect or refusal to qualify, it may be filled by the town council. C. 39, SS. 1, 19, 20.

The treasurer may be elected collector of taxes by the town. *Ibid.*, S. 17.

Bond.—Every town treasurer, before he shall proceed to discharge the duties of his office, shall give bond to the town for which he is appointed, in such sum and with such surety as shall be satisfactory to the town council thereof, conditioned for the faithful discharge of the duties of said office. C. 42, S. 1.

Accounts, Statement and Settlement.—Town treasurers shall, at the annual town meeting, make a statement of their accounts in writing, showing the several sums received and paid by them during the previous year, and showing in detail the persons to whom, and the purpose for which, the payments were made.

Such accounts shall be settled annually by the town council, or in such other way as the towns may severally direct; and when settled, the treasurer shall retain all his vouchers or receipts for the payments charged in such account, to be kept on file with the other papers of his office. *Ibid.*, SS. 2, 3.

Every person paying taxes on real or personal estate in the town shall be entitled to certified copies of such statement of accounts, and of any of such vouchers, from the town treasurer, upon payment to him therefor of the fees for copying and certifying allowed to town clerks for like services. *Ibid.*, S. 4.

Every town treasurer who shall neglect to make the annual statement as above required shall forfeit and pay to the town the sum of one hundred dollars for every such neglect. *Ibid.*, S. 5.

Collector, Action against.—The town treasurer may have his action against any collector and his sureties who shall neglect to pay in any tax to the town treasury by the time limited therefor. C. 48, S. 31.

Auctioneer's Bond.—The town treasurer of every town shall transmit to the general treasurer the name of every auctioneer appointed as aforesaid and a copy of the bond of such auctioneer, within twenty days from the time every such bond shall be given; and if any town treasurer shall neglect to transmit the name of any auctioneer or the copy of the bond by him given, to the general treasurer as aforesaid, he shall forfeit one hundred dollars, to be sued for and recovered by the general treasurer, to the use of the State. C. 159, S. 3.

Commissioner of Wrecks, Suit Against.—If the commissioner shall, for the space of sixty days after the expiration of the year hereinbefore limited for his accounting to the town treasurer, neglect to present his inventory and account of wrecked property and to pay and deliver the balance due thereon, together with all the said property re-

maining in his hands, the town treasurer shall cause a suit to be commenced in his name therefor for the use of the town, and shall prosecute the same to final judgment and execution. C. 119, S. 30.

Debts due from Towns.—Every person who shall have any money due him from any town, or any claim or demand against any town for any matter, cause or thing whatsoever, shall take the following method to obtain the same, to wit: Such person shall present to the town council of the town a particular account of his claim, debt, damages or demand, and how incurred or contracted; which being done, in case just and due satisfaction is not made him by the town treasurer of such town within forty days after the presentment of such claim, debt, damages or demand aforesaid, such person may commence his action against such treasurer for the recovery of the same.

On judgment being obtained for such debt, damages or demand, in case said treasurer shall not have sufficient of the money of such town in his hands to satisfy and pay the judgment obtained and the charges expended in defending such suit, the said treasurer shall make application to any justice of the peace in such town, and thereupon the justice shall grant a warrant to the town sergeant of such town, requiring him to warn the electors of the town to hold a town meeting, at such time and place as shall be appointed for the speedy ordering and making a tax, to be collected for the reimbursement of said treasurer. C. 36, SS. 12, 13.

Notice to the town council required by statute before bringing an action against a town is sufficient, if it states the facts from which the claim arises, though it does not state the amount of the claim.—*Burdick v. Richmond*, 16 R. I. 502.

Claims at law against municipal corporations can be prosecuted only against the town or city treasurer after presenting the account to the town or city council.—*Valcourt v. Providence*, 18 R. I. 160.

Distress against; Warrant.—If any town treasurer shall neglect or refuse to deliver to the general treasurer any delinquent collector's bond for suit, the general treasurer shall immediately issue a warrant of distress against such town treasurer, directed to the sheriff or his deputy of the county in which such town treasurer resides.

Such sheriff or deputy sheriff shall forthwith attach and take possession of all the real and personal estate of such town treasurer, and sell the same at public auction, in the same manner as in case of a delinquent collector. C. 49, SS. 7, 8.

Highways and Driftways, Payment for.—The charges for laying out any highway or driftway and all such damages as shall be agreed for or adjudged to any person through whose land such highway or driftway is laid either by the committee, town council, or courts, shall be paid by the town treasurer of the town in which the highway or driftway is laid; and if he shall refuse or neglect to pay the same, an action may be

brought and maintained for such money by the person to whom the same is due and payable. C. 71, S. 13.

Impounded Animals, Sale.—If the town treasurer shall find the proceedings of the poundkeeper correct, he shall sell said animal at public auction, after giving reasonable notice of such sale, and shall, out of the proceeds of the sale, pay the incidental expenses thereof, the cost of keeping such animal after the same was delivered to him by the poundkeeper for sale, the expenses and charges aforesaid, the expenses and penalty aforesaid, and in the order above, if the proceeds of the sale be not sufficient to pay the whole thereof. C. 128, S. 9.

Liquor License Money; Returns.—The treasurer of every town shall on the tenth day of June in the year 1901 and on the tenth days of January and July in the year 1902, and in each year thereafter, make returns to the general treasurer of all moneys coming to his hands belonging to the state, received under the provisions of this chapter, which return shall embrace the names of the persons from whom received and the amount received from each person. C. 102, S. 64.

School Money, Duties.—The town treasurer shall receive the money due the town from the state for public schools, and shall keep a separate account of all money appropriated by the state or town or otherwise for public schools in the town, and shall pay the same to the order of the school committee, and he shall credit the public school account, on the first Monday of May in each year, with the total amount of money received by him for poll-taxes during the year ending the thirtieth day of April last preceding.

The treasurer shall, before the first day of July in each year, submit to the school committee a statement of all moneys applicable to the support of public schools for the current school year, specifying the sources of the same. C. 54, SS. 9, 10.

When a town has been divided into school districts, neither the town nor the town treasurer is liable to garnishment for a teacher's wages until at least an order has been given in favor of the teacher by the school committee of the town.—*Doyle v. Harris*, 11 R. I. 539.

School Commissioner, Returns to.—The town treasurer shall, on or before the first day of July, annually, transmit to the commissioner of public schools a certificate of the amount which the town has voted to raise by tax for the support of public schools for the current year; and also a statement of the amount paid out to the order of the school committee, and from what sources it was derived, for the year ending the thirtieth day of April next preceding; and until such return is made to the commissioner, he may, in his discretion, withhold the order for the money in the state treasury belonging to such town. *Ibid.*, S. 11.

Taxes, Warrant.—The town treasurer shall forthwith issue and affix to the copy of the assessment a warrant under his hand, and which need not be under seal, directed to the collector of taxes of the town, com-

manding him to proceed and collect the several sums of money therein expressed, of the persons and estates liable therefor, by the time directed by the town, and to pay over the same to him or to his successor in office. Whenever any town shall elect its town treasurer collector of taxes for such town, such warrant shall be issued to the town treasurer as collector of taxes by the town clerk. C. 46, S. 22.

A like warrant is issued by the treasurer for the collection of poll-taxes. C. 47, S. 3.

Town Clerk, Warrant for Election.—Whenever any town clerk shall be removed by death or otherwise, the town treasurer of the town shall issue his warrant, to warn the electors to assemble in town meeting, to choose a town clerk in the room of him so removed. C. 37, S. 10.

Town Meeting, Preside.—In the absence of the town clerk the town treasurer shall preside in the election of a moderator. C. 38, S. 9.

Unclaimed Estates.—Whenever any person shall die leaving any real or personal estate within this state, and shall leave no known heir or legal representative to claim the same, the town council of the town in which such real or personal estate may be, may direct the town treasurer of such town to take the same into his possession for the use of such town until the heir or other legal representative of such deceased person shall call for the same, to whom the same shall be delivered on being claimed and evidence of the right or title of the claimant shown; and the said town shall in such case account with the claimant for such real or personal estate, but not including any income or interest received therefrom. C. 217, S. 1.

The interest vested in a town in the estate of a deceased person dying intestate, and leaving no known heirs or others entitled to distribution within the United States, cannot be recalled by the general assembly.—*Attorney-General v. Providence*, 8 R. I. 8.

Suit for Possession.—If any person shall appear to be possessed of any real or personal estate of one dying without known heirs or other legal representative as aforesaid, and shall on request refuse to deliver or surrender possession thereof to the town treasurer directed as aforesaid, such town treasurer may in his said capacity commence and prosecute an action for the recovery thereof. *Ibid.*, S. 4.

Turned Over By Executor.—Whenever any person who shall be entitled as distributee or creditor to the personal estate, or any part thereof, in the hands of an executor, administrator, or guardian, appointed in this state, shall for the space of five years after the decree of the probate court ordering the distribution, or establishing the amount of the claim, neglect to apply for the same, such executor, administrator, or guardian, or probate court, having control of the same, shall pay over the same to the town treasurer of the town wherein administration or guardianship was granted on said estate, taking the receipt of said treasurer, which shall be a sufficient voucher therefor. *Ibid.*, S. 5.

Whenever the town treasurer of any town shall receive any money by virtue of the preceding section, he shall retain the same in his hands for the use of the town of which he is treasurer until called for by the party entitled thereto or his executors, administrators, or assigns; and the town shall be liable to pay the amount so received, less the amounts paid out under the provisions of this chapter, to the party entitled to the same, without interest. *Ibid.*, S. 6.

Personal Property, Sale.—If the town treasurer shall receive any personal property referred to in this chapter which shall consist in whole or in part of any property other than cash, he may sell the same at public auction and retain the proceeds of such sale in his hands, under the limitations and for the uses aforesaid, after paying expenses of such sale out of said fund. *Ibid.*, S. 7.

Real Estate, Sale; Records.—Whenever a town shall have been in possession of any real estate under the provisions of section one of this chapter for ten years without any person having claimed the same as heir at law, devisee, legatee, or legal representative of such deceased person, and shall, by petition in equity setting forth all the known facts in relation to the title and possession of such real estate and in relation to the person who died leaving the same, apply to the appellate division of the supreme court for leave to sell and convey the same, the court shall order such notice of the pendency of the petition to be given as may to the court seem proper, and may, after the return of such notice and the hearing of all persons interested in such real estate, order the sale and conveyance thereof in such manner and upon such terms and conditions as the court shall prescribe.

The proceeds of such sale, as also the balance of any proceeds after proceedings by creditors under section two of this chapter, over and above all expenses incurred by said town, shall be held by such town and be accounted for in the same way and be held for the same uses as the real estate would have been had no sale thereof been made.

The town treasurer shall keep an exact record of his proceedings under the provisions of this chapter. *Ibid.*, SS. 8, 9, 10.

Subject to Debts.—Whenever any real or personal estate shall be taken into possession by any town treasurer pursuant to this chapter, the same shall be subject and liable to the payment of the debts of the deceased to whom it belonged, as liens thereon; and such liens may be established and enforced by proceedings in a court of equity brought by said creditors against said town as trustee, at any time within two years after such town has taken possession. *Ibid.*, S. 2.

Undertakers.—Every town council may appoint a sufficient number of persons to act as undertakers, removable at the pleasure of such council. C. 100, S. 8.

VINEGAR INSPECTORS.

Inspectors of vinegar may be appointed by the town council, and inspectors of milk may act as such. C. 148, S. 4.

Compensation.—The compensation to be received by inspectors of vinegar shall be fixed by the town council of their town. *Ibid.*, S. 3.

VOTERS.

Qualifications.—In this state there are two classes of voters, the first as registered, the second as unregistered, who have a right to vote in the election of all civil officers and on all questions in all legally organized town, ward, or district meetings.

Of the registered class, no person is allowed to vote in the election of the city council of a city, or upon any proposition to impose a tax, or for the expenditure of money in any town or city, unless he shall within the year next preceding have paid a tax assessed upon his property therein, valued at least at one hundred and thirty-four dollars.

Other persons, not registered, but otherwise qualified to vote, may exercise the privilege, who are really and truly possessed in their own right of real estate in the town or city where they claim the right to vote, of the value of one hundred and thirty-four dollars above incumbrances, or which rents for seven dollars per annum clear of interest on incumbrances, being an estate in fee simple, fee tail, for life, or in reversion or remainder, which qualifies no other person to vote, the conveyance of which estate if by deed shall have been recorded at least ninety days; or who have such an estate, within the state, but out of the town or city in which they reside as above described, and who in that case shall produce a certificate from the clerk of the town or city in which the estate lies, bearing date within ten days of the time of his voting, setting forth that such person has a sufficient estate therein to qualify him as a voter and that the deed, if any, has been recorded ninety days. C. 6, SS. 1, 2.

A husband otherwise qualified may vote by virtue of his interest in the realty of his wife, provided such realty is a freehold estate of the value prescribed in the constitution. (1) If the husband has a tenancy by the curtesy initiate; (2) If no tenancy by the curtesy exists, then if the marriage and the acquisition of the realty by the wife both took place prior to December 2, 1872. — *In re Voting Laws*, 12 R. I. 586.

The vote of a person whose name does not appear on the list of voters is to be rejected by the moderator or warden, although such person may be a qualified voter under article 2, section 1 of the state constitution.— *In re Polling Lists*, 13 R. I. 729.

One having an estate in remainder under a will was held to be a qualified voter.— *In re The Liquors of Horgan*, 16 R. I. 542.

See also “Town Clerk,” “Town Council.”

CONNECTICUT

CONNECTICUT.

INTRODUCTORY.

The system of town government in Connecticut presents certain distinctive features which deserve special mention.

The selectmen are the executive and administrative body as in other states, but they perform certain functions which are peculiar to that state. The part which they play in the admission of persons to the right of suffrage is, so far as known, unique. Under the provisions of the state constitution, the duty of admitting persons to the privileges of the elective franchise is cast upon the selectmen and town clerk. The preliminary work of listing persons claiming to be qualified for the franchise is performed by the registrars of voters. Persons whose names have been placed on the list, and no others, may present themselves for admission as electors before the selectmen and town clerk acting as a board of admission. The decisions of the board are final, and the lists certified by them are used at all electors' meetings.

The position, or office, of first selectman, which is held by that member of the board who receives the highest number of votes cast for the office, is also peculiar. He is *ex officio* town agent in the absence of a special appointment to that office, and in towns having a population of fifteen thousand inhabitants or over, in which the selectmen are financial agents, he is required to furnish a bond to the town, before entering upon the duties of his office, in the sum of three thousand dollars, while other members of the board give a bond for twenty-five hundred dollars each.

The selectmen perform the duties of overseers of the poor and of surveyors of highways. They select annually the jurors required from their town, and nominate the list to the clerk of the superior court of the county without the intervention of any other authority.

They exercise the usual powers of appointment to such offices as are not filled by election, or vote of the town, issue licenses to auctioneers, pawnbrokers, dealers in second-hand articles and keepers of lodging-houses, and may grant licenses and regulate exhibitions and other public amusements in the town. They are authorized to lay out necessary highways and other public ways, but not within a city or a borough having by its charter, or by the general provisions of law, control of and liability for the highways within its limits. They may discontinue any highway or private way with the approbation of the town, except such ways as are laid out under an order of court or by the General Assembly, or ways lying in a city or a borough.

They have exclusive control over the location of tracks, wires, fixtures, and other permanent structures of street railways in the public ways, over the relocation or removal of the same, and over changes in the grade of such railways. They may make suitable regulations touching the speed at which any street railway company may run its cars upon any highway, and from such regulations there is no appeal; but the speed of such cars may not exceed fifteen miles per hour.

In any town which has established a plant for the manufacture of gas or electricity, for furnishing light for municipal use or the use of the inhabitants, a commission of three citizens of the town, known as the board of gas commissioners, board of electric light commissioners, or board of gas and electric light commissioners is appointed by the selectmen. The members of the commission are each required to give such official bond as the selectmen may determine and approve; and the board report to the selectmen in detail once a year and at other times, when called upon, their doings, receipts and disbursements and indebtedness to the town.

The functions performed by the town clerk in Connecticut are in some respects distinctive. As stated above, he is a member of the board of admission, and thus assists in determining what persons shall exercise the right of suffrage. He also performs the important duty of warning all electors' meetings. He may call a meeting of the electors to fill a vacancy occurring in the office of representative in the General Assembly, when such vacancy occurs, on or before the first Tuesday of February succeeding any biennial election.

He performs the usual duties of a clerk as the recording officer of votes and proceedings in town meetings and also those of register of deeds. He is *ex officio* registrar of births, marriages and deaths, and is the custodian of all books, records, and instruments required to be kept on file in the archives of the town. He is also required to keep a record-book for the recording of judgments of justices of the peace. He issues licenses to persons intending marriage, authorizing such persons to be joined in marriage within the town only. He also issues dog licenses.

The office of moderator is somewhat restricted in Connecticut. Moderators for electors' meetings are appointed by the registrars of voters, who also appoint a moderator to preside at town meetings for the election of town officers, which are held and conducted, as far as may be, in the same manner as electors' meetings. All towns when lawfully assembled for any other purpose than the election of town officers, have power to choose a moderator to preside at such meetings, unless it is by law otherwise provided.

In general, the powers of the moderator are substantially the same as those of like officers in other states; but special powers are conferred upon moderators at elections in certain towns named in the statutes.

There is one feature of town government in Connecticut found in only one other state in New England (Rhode Island) which is of special interest. A city may be included within the limits of a town. This condition exists in several towns without any serious conflict or confusion between the two municipalities. New Haven may be taken as a typical example. A full quota of town officers is annually elected at the town meeting. Seven selectmen, a town agent, town clerk, town treasurer, tax-collector, five assessors, two auditors, three sealers of weights and measurers, five pound-keepers, five haywards, seven constables, seven surveyors of highways, seven fence-viewers, fifty-six justices of the peace, and other minor functionaries, one hundred and fifty-one in all, are chosen to rule over a territory three-fourths of which is included within the limits of the city of New Haven.

"The town meeting, the venerated folk-moot of our Teutonic ancestors, has shrunk to smallest proportions. With its vast constituency of over a hundred thousand inhabitants, it draws together only a handful of voters. Not a hundredth part of the citizens attend. They hardly know that it is held. The first business done is the election of officers; and on another day, as a business meeting, it hears the reports of officers, authorizes or sanctions expenditures, reviews the estimates of proportion, and determines the annual town tax of one hundred thousand people. The few individuals who are or have been officially interested in the town government talk over matters in a friendly way and adjourn. The newspapers give its transactions a scant notice, which some of their subscribers probably read. The town is, therefore, an oligarchy in the bosom of a slumbering democracy."¹

The borough is another distinctive feature of municipal government in Connecticut. Since 1801, when the first charter was granted to the borough of Stonington, between seventy and eighty such charters have been conferred upon villages under the designation of boroughs. They are a sort of miniature cities in which the warden and burgesses correspond to mayor and aldermen. The charter goes into effect upon its acceptance by a vote of the town in which the borough is situated, at a meeting of the electors warned and called in the manner prescribed by the charter.

In general, the purpose served by such incorporation is to secure to the inhabitants of the borough certain rights and privileges which the territory outside of its limits ought not to be taxed for, and the town itself does not possess. Boroughs are municipal corporations, capable of suing and being sued, and of holding and conveying property.

They have a common seal, and exercise such powers as are conferred by their charters and the general law. Their officers consist usually of a warden and six burgesses, who constitute a council with legisla-

¹ C. H. Levermore, "Republic of New Haven," pp. 288, 290.

tive and executive powers, a clerk, a bailiff, a treasurer, one or more auditors, two or more assessors and a collector of taxes, who are elected by the freemen of the borough at their annual meeting.

The warden is the chief executive officer of the borough, presides at meetings of the freemen and of the borough council, and may call such meetings. The warden and burgesses have like authority with towns to enact by-laws and ordinances for their welfare, and also relating to street railways, the public lighting plant and other matters specified in the charter of the borough. They may lay out, alter, and repair highways, streets and sidewalks; construct and maintain drains and sewers; build or otherwise acquire water works; erect or purchase an electric-lighting plant; and, for such purposes, may levy and collect taxes and issue bonds or notes in payment for such public utilities, in accordance with the provisions of the charter. The inhabitants of the borough continue to be citizens of the town, and as such are entitled to all the privileges, and are subject to all the burdens of the other citizens.

The qualifications of electors in Connecticut present some interesting peculiarities. By the adoption in 1818 of the present Constitution, persons of color were excluded from the elective franchise. In 1876, however, the twenty-third amendment, striking out the word "white" from section 2, article VI, was adopted, and since then there has been no discrimination against persons of color in the exercise of the right of suffrage. The educational qualification was introduced by the eleventh amendment, adopted in 1855.

In 1845, by the eighth amendment, the requirement that an applicant for the elective franchise "shall sustain a good moral character," was added. This, as defined by statute, excludes from the electorate any person who, during his minority has been convicted three or more times of any offense punishable by the laws of this state with imprisonment, or with fine and imprisonment; or who has, within twelve months before reaching his majority, been convicted of bribery, forgery, duelling, fraudulent bankruptcy, theft, or other offense for which an infamous punishment is inflicted; or who, at the time of reaching his majority, was serving a term in jail or prison for any such offense. No idiot or insane person is admitted an elector. G. S., § 1594.

Women, when duly registered, are entitled to vote in any meeting held for choosing school officers, or upon any matter relating to education or to schools.

The following pages cover the statutes relating to towns comprised in the Revision of 1902, of the General Statutes, and the Public Acts of 1903 and 1905. The decisions cited include those contained in volume 77 of the reports of the state Supreme Court.

STATUTES.

[REFERENCES NOT OTHERWISE DESIGNATED ARE TO GENERAL STATUTES OF CONNECTICUT, 1902, AS AMENDED.]

TOWN OFFICERS, IN GENERAL.

The Constitution of the state (Article X, section 2) provides that each town shall annually elect selectmen and such officers of local police as the laws shall prescribe. With certain exceptions, provided for by special statutes, town officers are chosen annually by ballot in the several towns in the state, to serve for one year from the date of their election; and the law requires that votes for all officers voted for at one and the same election shall be placed upon one ballot of certain prescribed dimensions. Separate ballots and ballot-boxes are provided for women at elections in which they are entitled to vote.

Special rules for the election of the different officers will be found under the appropriate titles of such officers. Among the peculiar provisions in regard to elections in this state are those relating to minority representation, which apply to the election of assessors, members of the board of relief, selectmen, constables, and grand jurors, in towns which choose two, four, or six persons for those offices.

Incompatible Offices.—No selectman can hold the office of town clerk, town treasurer, or collector of town taxes, of the same town, during the same official year, nor can any town clerk or selectman be a registrar of voters; and no registrar of voters can hold the office of town clerk. If any registrar of voters is elected to the office of town clerk or selectman, and accepts the office, he thereupon ceases to be a registrar; and if any town clerk or selectman is elected registrar of voters the election is void; and in either of said cases the selectmen forthwith appoint another registrar. SS. 1813, 1805.

Vacancies.—If any town office be vacant by the neglect of the town to elect or appoint, or from any other cause, if such office is elective, the town may in legal town meeting fill the vacancy; but until the town fills it, such vacancy may be filled by the selectmen who have power to fill all vacancies that may arise in offices to which they have power of appointment. S. 1814.

Official Oaths.—As a rule, town officers are required to be sworn before they enter upon the performance of their duties, and their official oaths are recorded by the town clerk in the town records.

Bonds.—Official bonds are required of the town clerk of every town and of the selectmen in every town having a population of fifteen thousand or over, wherein the selectmen are the financial agents of the town. Bonds are also required of constables and collectors of taxes. SS. 1829, 1842, 1844, 2382.

Compensation.—The compensation of town officers, when not derived from fees fixed by law, is usually determined by vote of the town; and heavy penalties are denounced against all public officers who charge and receive, or retain, receive, or collect to their own use any sum, or sums, in excess of their legal salary or compensation, or who, directly or indirectly, for themselves or others receive any allowance or reward from the person or persons making contracts, furnishing materials or other articles, or rendering labor for any city, town, or borough. SS. 1365, 1366.

A citizen who accepts a position of honor and trust for the benefit of his fellow-townsmen is not entitled to payment for services rendered by him in the discharge of a public duty thus voluntarily assumed, unless provision for payment has been made by law or by contract with the municipality. This rule applies to services rendered by a building committee.—*Beckwith v. Farmington*, 77 Conn. 318.

ASSESSORS OF TAXES.

Election.—With certain exceptions named in the statutes, every town at its annual town meeting chooses by ballot not less than two nor more than five assessors, to serve for one year from the day of their election. When the number to be elected shall be two, four or six, no person may vote for more than one-half the number; if the number to be elected be three, no person shall vote for more than two; if the number be five, no person shall vote for more than three; if the number be seven, no person shall vote for more than four. That number of persons sufficient to fill the office who have the highest number of votes shall be elected. In case of a tie, the person whose name stands first or highest on the greatest number of ballots shall be elected.

No assessor may act as a member of the board of relief. SS. 1800, 1810.

Official Oath; Compensation.—Every person elected or appointed an assessor is required, before entering upon the duties of the office, to be duly sworn, and any person so elected or appointed who accepts the office, if he shall afterwards refuse to be sworn or to perform the duties of the office, shall be fined thirty dollars. S. 1822.

The compensation of assessors, except in the towns of Hartford, New Haven, and Waterbury, may be established by any town at any annual town meeting or at any special meeting called for the purpose, and when so established shall remain the same until altered by the town; and if any town neglects to fix such compensation the selectmen of such town shall fix the sum until so established by the town. S. 4854.

Notice to Taxpayers.—The assessors in each town, except as otherwise specially provided by law, shall on or before the fifteenth day of October annually post on the signposts therein, or publish in a newspaper published in said town, a notice requiring all persons therein, liable to pay taxes, to bring in written or printed lists of the taxable property belonging to them on the first day of October in that year. S. 2296.

The property which is in the custody of the court and in the hands of the receivers only as an arm of the court does not "belong" to them in the sense in which that term is used in the statute.—*Brooks v. Hartford*, 61 Conn. 112; *Goddard v. Seymour*, 30 Conn. 394.

Lists to Specify Property.—Tax-payers' lists shall specify the different kinds of property, except that household furniture, libraries, and tools may be set in the list in gross; and shall also contain one general head, embracing all taxable property not specifically mentioned; and the taxable property of married women shall be set in the lists of their husbands, except as in section 2298 provided. S. 2297.

Married Women, Estate, How Listed.—The taxable property of every married woman shall be listed in her name, if she shall give in a list of the same to the assessors according to law, or if her husband shall, within the time required by law for giving in lists of taxable property, give to either of the assessors written notice that he requests her taxable property to be listed in her name, and particularly specifies it. If such property of the wife is not listed, either in her husband's name or in her own name, by her or upon her husband's request, it shall be placed by the assessors, or by the board of relief if omitted by the assessors, in the name of either husband or wife, at the discretion of such assessors or board of relief, and any tax otherwise legal laid upon such property shall be a lawful tax against the person in whose name it is so set in the list; and such property shall be liable to be levied upon and sold for the payment of such tax and costs of collection; and if the property be real estate such tax shall be a lien thereon, which may be continued as in other cases. S. 2298.

The provisions of section 2297, authorizing the taxable estate of a married woman to be set in her husband's list, upheld. Real estate cannot be foreclosed under a lien for taxes on personal property.—*Union School District v. Bishop*, 76 Conn. 695.

Real Estate Assessed in Name of Owner.—Any interest in real estate listed for taxation shall be set by the assessors in the list of the party in whose name the title to such interest stands on the land records of the town in which such real estate is situated; but nothing in this section shall affect the provisions of section 2298 (as to separate property of married women). S. 2299.

Real estate listed in the name of an agent held not to have been covered by the assessment made upon it, and the lien could not be foreclosed against its owners.—*Meyer v. Trubee*, 59 Conn. 422.

A joint assessment should not be made where the interests of the owners are separate and distinct.—*New London v. Miller*, 60 Conn. 112.

Land was held to be properly listed in the name of a corporation and not in the name of its receiver.—*Lamkin v. Baldwin, etc., Mfg. Co.*, 72 Conn. 57.

Lists to be Verified.—The assessors in every town shall require every person giving in a tax list to sign, date, and deliver to them a sworn statement upon said list in the form given in the statute; and every person giving in a tax list shall make oath to, sign, date, and deliver to the assessors a statement upon said list in said form. S. 2302.

Where a tax-payer returned to the assessors a list containing a correct description and valuation of his real estate, but which did not specify the different kinds of his personal property, it was *held* that it was the duty of the assessors to receive the same as a valid list of the real estate.—*New Canaan v. Hoyt*, 23 Conn. 148.

In a case where a tax-payer, when asked by an assessor if there were any changes in his property, replied, there was not, with certain exceptions which he gave, and the assessor then said "you take your oath that that is all, do you," to which the tax-payer replied "certainly I do." *Held* not to be an oath within the meaning of the law.—*Arnold v. Middletown*, 41 Conn. 206.

When Given In.—Each resident of any town liable to give in a list and pay taxes therein shall, except as otherwise specially provided by law, on or before the first day of November, annually, give in his list, made and sworn to as prescribed by law, making a separate description of each parcel of real estate; and where reference can be made to a map on file in the town clerk's office such reference shall be sufficient description; and if he shall neglect or refuse so to do, the assessors shall fill out a list for him, putting therein all property which they have reason to believe is owned by him, liable to taxation, at the actual valuation thereof from the best information they can obtain, and add thereto ten per cent. of such valuation, and in said list they shall make a separate description and valuation of each parcel of real estate. When the first day of November comes on Sunday, then the list may be made out and sworn to the day following. S. 2303.

It is enough that assessment-lists are made up with so much certainty that tax-payers may know for what and how much they are to be taxed, and that the taxes to be levied may be duly apportioned. One who brings in a list is estopped from denying that the property listed is taxable.—*Goddard v. Seymour*, 30 Conn. 397; *Adam v. Litchfield*, 10 Conn. 131.

Before the assignment of its property to the assignee in bankruptcy was recorded in the town records, a list of the real estate of a non-resident bankrupt corporation, in the absence of a list from the corporation, was filed by the assessors who added ten per cent. *Held* that the tax-list was lawfully made in the name of the corporation, but the ten per cent. valuation was not legally added by the assessors.—*Jones v. Bridgeport*, 36 Conn. 283.

Where a tax-payer fails to give in a sworn list of his taxable property, the assessors are authorized to fill out a list for him, and they may use their best judgment as to the amount and valuation of the property which they put into the list:—"all taxable property not specifically mentioned, \$25,000," *held* to be a sufficient description and a legal assessment.—*Hartford v. Champion*, 54 Conn. 436; *Ibid.*, 58 Conn. 268.

A non-resident is not liable to an addition of ten per cent. to his assessment-list for neglecting to give in a sworn list of his taxable property.—*Shaw v. Hartford*, 56 Conn. 351; *Jones v. Bridgeport*, 36 Conn. 283.

A resident tax-payer who claimed that an addition of ten per cent. to her list, made by the assessors and confirmed by the board of relief, was illegal, was entitled to bring her application to the Superior Court; and the mere fact that she did not appear before the board of relief did not oust the court of its jurisdiction of such application.—*Morris v. New Haven*, 77 Conn. 108.

Examination of Delinquents.—Every person liable to give in a list of his taxable property, and failing to do so, may, within twenty days after the expiration of the time fixed by law for filing such list, be notified in writing by the assessors or a majority of them to appear before them to be examined under oath as to his property liable to taxation and for the purpose of verifying a list made out by them under the provisions of section 2303. Any person who shall wilfully neglect or refuse to appear before said assessors and make oath to a list of his taxable property within ten days after having been so notified, or who, having appeared, shall refuse to answer, shall be fined not more than one thousand dollars. It shall be the duty of the assessors promptly to notify the proper prosecuting officer of any violation of this section. S. 2304.

Defective List Accepted; Penalty.—Every assessor who shall accept the list of any person not made, sworn to and perfected according to law, shall forfeit all compensation for acting as assessor, and shall also for each list so accepted, be fined not more than fifty dollars. S. 2305.

Neglect to Return List; Penalty.—Every assessor, who shall neglect to hand in a sworn list of his taxable property to the assessors of the town in which he resides, shall be fined not more than fifty dollars. S. 2306.

Omitted Property Added.—The assessors in each town shall add to the list of any resident in such town and of any non-resident who shall give in his list, made and sworn to in the manner provided by law, any taxable property which they have reason to believe is owned by him, and which has been omitted from said list; but such assessors, except as otherwise specially provided by law, shall on or before the twentieth day of January next following, give him notice thereof in writing; and if he shall not be a resident of such town, such notice addressed to him at the town in which he resides, and sent by mail, postage paid, shall be a sufficient notice. S. 2307.

An item added by assessors to the list of a tax-payer of "20 bank stock, \$2000," is not invalid because the stock was not described with sufficient particularity.—*Monroe v. New Canaan*, 43 Conn. 309.

The addition of personal property by the assessors to the list made by a non-resident, who had included in the list other personal property, was illegal.—*Phelps v. Thurston*, 47 Conn. 477.

An appeal to the board of relief by a tax-payer is a waiver of the notice required by law to be given by the assessors.—*Quinebaug Reservoir Co. v. Union*, 73 Conn. 294.

Lists and Abstract of Previous Year.—The assessors while in session to perfect the lists and make the abstracts thereof, may take from

the town clerk's office the lists and abstract of the town for the previous year. S. 2308.

Non-residents' Property.— The taxable property of non-residents shall be arranged in separate assessment lists and valued by the assessors from the best information to be obtained. S. 2309.

The statute is merely directory to the assessors,—*Adams v. Seymour*, 30 Conn. 402.

The personal property of a non-resident is not generally subject to taxation in a town, and he waives no rights by not bringing in a list or applying to the board of relief.—*Phelps v. Thurston*, 47 Conn. 477.

Perfected Lists and Abstract.— When the lists of any town have been so received or made by the assessors, they shall equalize the same, if necessary, make any assessment omitted by the state, or required by law. Said assessors may increase or decrease the valuation of property as named in any of said lists or in the last preceding grand list, but in each case of any increase of valuation above the valuation of such property in the last preceding grand list they shall give written notice in person, or by mail, of such increase to the party whose list or valuation is so changed.

When said lists are so completed said assessors shall arrange the lists in alphabetical order, and lodge the same, except the lists of towns having more than ten thousand inhabitants, in the town clerk's office, on or before the fifteenth day of January, for public inspection; and they shall lodge the lists of towns having more than ten thousand inhabitants, except as otherwise specially provided by law, in the town clerk's or assessors' office, on or before the thirty-first day of January for public inspection.

The assessors of every town shall make an abstract of said lists including the ten per cent. added thereto, and, except as otherwise specially provided by law, shall lodge said abstract in the town clerk's office on or before the thirty-first day of January, for public inspection. S. 2310.

As the power of taxation is derived exclusively from statutory provisions of the law, their requirements must be strictly complied with.—*The Thames Mfg. Co. v. Lathrop*, 7 Conn. 550; *New Britain v. Mariners' Savings Bank*, 67 Conn. 528.

To render an assessment legal and valid every article therein specified must appear on the face of the list to be legally subject to taxation.—*Adam v. Litchfield*, 10 Conn. 127; *Whittelsey v. Clinton*, 14 Conn. 72.

To constitute a legal assessment-list, the agency or sanction of a majority of the assessors is necessary.—*Middletown v. Berlin*, 18 Conn. 189.

The alteration by an assessor of an assessment-list after it was perfected and lodged with the town clerk rendered him liable to the tax-payer whose list was altered in an action of trespass.—*Bristol Mfg. Co. v. Gridley*, 28 Conn. 201.

An assessment-list is not a record.—*Goddard v. Seymour*, 30 Conn. 394.

It is not necessary that it should appear on the face of an assessment-list, in the case of items added by the assessors, that they are not exempt from taxation.—*Monroe v. New Canaan*, 43 Conn. 309.

A board of relief added to a tax-list "\$1264," with nothing to indicate the property intended. The tax-payer did not appear before the board to show cause why this amount should not be added to his list, although notified to do so. *Held*, that the addition was legally made and sufficient in form.—*Lewis v. Eastford*, 44 Conn. 477.

Abstract to be Sworn to.— Every assessor, before lodging such abstract with the town clerk, shall take and subscribe the oath provided by law, which shall be certified by the magistrate administering the same, and indorsed upon or attached to said abstract. S. 2311.

EXEMPTIONS.

Poll-taxes.— Every male person between the ages of twenty-one and seventy years shall pay a poll tax of one dollar for town and state taxes.

The polls of the following persons shall be exempt from taxation:— Students in colleges and incorporated academies; the active members of fire engine, hook and ladder, and hose companies, during their time of service; engineers and members of any fire department in any city, town, or borough, who shall have served as such for five consecutive years in this state, and who shall produce a certificate of such service signed by the chief engineer of such department, or by the foreman and secretary of the company or companies in which such service shall have been performed; field and staff officers, who, being duly uniformed, armed, and equipped, have legally performed military duty during the year next preceding; any officer, musician, or private of the active militia companies, who shall, on or before the twentieth day of October, annually, produce a certificate from the commanding officer of the company to which he belongs, that he has performed military duty, uniformed and equipped according to law, during the preceding year, or has been prevented from doing the same by any reasonable cause; persons who have faithfully served the full term of five years in the active militia since the sixth of July, 1865, or who pay a military commutation tax, or who served in the army or navy of the United States and was honorably discharged therefrom, or were discharged on account of wounds or sickness incurred in such service and in the line of duty, or on account of the expiration of their term of service. SS. 2313, 2314.

Property Exemptions.— The following property shall be exempt from taxation: All property belonging to the United States, or this state; buildings, with their appurtenances, belonging to any county, town, city, or borough; buildings or portions of buildings exclusively occupied as colleges, academies, churches, public schoolhouses, or infirmaries; parsonages of any ecclesiastical society to the value of five thousand dollars, while used solely as such; buildings belonging to and used exclusively for scientific, literary, benevolent, or ecclesiastical societies, not including any real estate conveyed by any ecclesiastical society or public or charitable institution without reserving an annual income or

rent or by a conveyance intended to be a perpetual alienation, and not including any real estate of any educational, benevolent, or ecclesiastical corporation or association, whether held in the name of such corporation or association or by any person or persons in trust for such corporation or association, which is leased or used for other purposes than the specific purposes of such corporation or association, nor including lands granted and given for the maintenance of the ministry of the gospel while leased; all lands used exclusively for cemetery purposes; the property to the amount of three thousand dollars of any pensioned soldier, sailor, or marine of the United States, who, while in service, lost a leg or arm, or suffered disabilities which by the rules of the United States pension office are considered equivalent to such loss; the property to the amount of three thousand dollars of any person, who, by reason of blindness, is unable by his labor to support himself and family; the property to the amount of one thousand dollars of every resident in this state who has served in the army, navy, marine corps, or revenue marine service of the United States in time of war, and received an honorable discharge therefrom; or, lacking such amount of property in his own name, so much of the property of the wife of any such person as shall be necessary to equal said amount; and property to the amount of one thousand dollars of the widow resident in this state, or, if there be no such widow, of the widowed mother resident in this state, of every person who has so served and has died, either during his term of service, or after receiving honorable discharge from said service; and property to the amount of one thousand dollars of pensioned widows, fathers, and mothers, resident in this state, of soldiers, sailors and marines, who served in the army, navy, or marine corps, or revenue marine service, of the United States; wearing apparel of every person and family, not including watches and jewelry of any kind exceeding twenty-five dollars in value; household furniture, used by and belonging to any one family, to the value of five hundred dollars; farming tools, actually and exclusively used in the business of farming upon any one farm, not exceeding in value two hundred dollars; the produce of a farm, while owned and held by the producer, actually grown, growing, or produced, during the season next preceding the time of listing, including colts, calves, and lambs; fuel and provisions for the use of any one family; swine to the value of fifty dollars; poultry to the value of twenty-five dollars; sheep and Angora goats owned and kept in this state to the value of one hundred dollars; cash not exceeding one hundred dollars; private libraries and books, not exceeding two hundred dollars in value, and all public libraries; all musical instruments, not exceeding in value twenty-five dollars; all musical instruments used exclusively by churches; all fire engines, and other implements, used for the extinguishment of fires, with the buildings used exclusively for the safe-keeping thereof; the tools of a mechanic, actually used by himself in

his trade, to the value of two hundred dollars; any horse used on parade in the performance of military service by the owner, his son, ward, or apprentice; all fishing apparatus, actually used by any one person or company, to the value of two hundred dollars; the stock or property of every incorporated agricultural society; the stock or securities issued by any ecclesiastical society, to raise funds for the erection, alteration, or repair of any church edifice, but only to the amount of the actual cost of such erection, alteration, or repair; all property of any hospital society which is supported wholly or in part by state appropriations; all moneys or funds received and accumulated by grand army posts in the state of Connecticut, from donations, bequests, and collections for charitable purposes, or which may hereafter be received by grand army posts for charitable purposes; bonds of the state of Connecticut issued pursuant to any act which provides for their exemption from taxation; bonds in the hands of the holders thereof, issued by any town or city in aid of the construction of the railroads of the Connecticut Western Railroad Company, the New Haven, Middletown & Willimantic Railroad Company, the Shepaug Valley Railroad Company, the Connecticut Valley Railroad Company, the Connecticut Central Railroad Company, or either of them, to provide or raise money to pay for stock subscribed for by it in any of said companies; but such bonds or stock, when their avails shall have been expended in the construction of any of said railroads, shall be assessed and taxed in the manner provided in section 2424. When any town or city in this state has issued or shall issue new bonds under or by virtue of any statute, public or private, for the purpose of redeeming or providing a fund to redeem its bonds originally issued in aid of the construction of any railroad, and which by the statutes of this state were exempt from taxation, or for redeeming or providing a fund to redeem any reissue of the same, such new bond, and the amount invested therein shall be exempt from taxation in the hands of the holders thereof, in the same manner and to the same extent as the original bonds, and the amount invested therein, and no direct, indirect, or franchise tax shall be assessed thereon. S. 2315.

The buildings upon land exempted from taxation were held liable to be taxed against the lessee under the covenants of his lease.—*Parker v. Redfield*, 10 Conn. 490; *Hart v. Cornwall*, 14 Conn. 228; *Russell v. New Haven*, 51 Conn. 259.

Land granted to an ecclesiastical society without any condition as to its use, held not to be a grant for a religious and charitable purpose, and not exempt from taxation under the statute of 1702.—*Seymour v. Hartford*, 21 Conn. 481.

Lands granted to the ministry are not exempted from taxation in the hands of a purchaser.—*New Haven v. Sheffield*, 30 Conn. 160.

The act of 1859, which withdraws freedom from taxation in certain cases from lands given for the maintenance of the ministry, held not unconstitutional. A lease for 999 years for a gross sum is for all practical purposes a conveyance in fee.—*Brainard v. Colchester*, 31 Conn. 407.

The statute of 1702, with regard to gifts for charitable uses, did not constitute a contract between the state and either the donor or donee of such lands.—*Lord v. Litchfield*, 36 Conn. 116.

Property conveyed to public and pious uses before 1821 may be taxed if the legislature chooses to subject it to taxation, but as long as it is faithfully appropriated to its designated use, it is under the protection of the statute of 1702. A tax illegally assessed in part is illegal *in toto*.—*First Ecclesiastical Society v. Hartford*, 38 Conn. 274.

Reservoirs held for the use of the inhabitants of a city are not subject to taxation in the town where they are situated. Additional lands in use for a reservoir are not exempt.—*West Hartford v. Board of Water Commissioners*, 44 Conn. 361.

The statute does not exempt any building earning money applicable to secular uses.—*Camp Meeting Association v. East Lyme*, 54 Conn. 152.

Property not "exclusively used" for an ecclesiastical society held not exempt from taxation.—*Manresa Institute v. Norwalk*, 61 Conn. 228; *First Unitarian Society v. Hartford*, 66 Conn. 368.

So of property exempted under a charter to be used solely for the purpose of education and instruction.—*Hartford v. Hartford Theological Seminary*, *Ibid.* 475.

Buildings of Yale University occupied exclusively as dormitories and dining-halls by its students were non-taxable under section 3820 of the General Statutes; but real estate held in the name of the University, but substantially owned and enjoyed by one of its professors, is taxable and should be included in his list.—*Yale University v. New Haven*, 71 Conn. 316.

List of Exemptions Filed.—The assessors of each town shall annually make a certified list of all persons resident in such town, who are found to be entitled to exemption under the provisions of section 2315, which list shall be filed in the town clerk's office. S. 2316.

Soldiers and Blind Persons.—The exemptions in section 2315 to soldiers, sailors and marines, and their wives, widows, fathers and mothers and to blind persons, shall first be made in the town in which the person entitled thereto resides, and any person asking such exemption in any other town shall make oath before or forward his or her affidavit to the assessors of such town, deposing that such exemptions, if allowed, will not, together with any other exemptions which may have been granted under section 2315, exceed the amount of exemption thereby allowed to such person. The assessors of each town shall annually make a certified list of all persons resident in such town, who are found to be entitled to exemption under the provisions of section 2315, which list shall be filed in the town clerk's office, and shall be *prima facie* evidence that such persons are entitled to such exemption so long as they reside in said town; but such assessors may at any time require any such person to appear before them for the purpose of furnishing additional evidence. S. 2316.

College Property.—The funds and estate which have been or may be granted, provided by the state, or given by any person or persons to the president and fellows of Yale University, the board of trustees of the Sheffield Scientific School, Trinity College, or Wesleyan University, and by them respectively invested and held for the use of such institutions shall with the income thereof, remain exempt from taxation; *provided, however*, that neither of said corporations shall ever hold in this state

real estate free from taxation, affording an annual income of more than six thousand dollars. S. 2317.

Under the charter of an institution exempting from taxation real and personal property while used for the promotion of science, the exemption extends not merely to such property as is in actual use by the corporation, but also to that of which the income is used for that purpose.—*New Haven v. Trustees of Sheffield Scientific School*, 59 Conn. 163; *Hartford v. Hartford Theological Seminary*, 66 Conn. 475.

Vacant lots, houses, and factories belonging to Yale University held to be exempt, unless the income from them exceeds the limit fixed by the law of 1834.—*Yale University v. New Haven*, 71 Conn. 316.

Church Property.—Any church or ecclesiastical society in this state may have and hold exempt from taxation personal property consisting of bonds, mortgages, or funds invested, to an amount not exceeding in value the sum of ten thousand dollars; *provided* that such personal property shall be held solely for the uses of such society, and the revenue derived therefrom shall be used exclusively for the maintenance of public worship and the ordinary expenses incident thereto; and *provided* that such society shall not have and hold property exceeding in value twenty thousand dollars in personal or real estate which is exempt from taxation, otherwise than by virtue of this section. S. 2318.

Money Loaned on Mortgage.—Money loaned on interest, with an agreement that the borrower shall pay the taxes thereon, and secured by a mortgage of real estate in this state, shall, to an amount equal to the assessed value of the mortgaged land in the assessment-list of the town where it is situated, be exempt from taxation; but the excess of any such loan over such valuation shall be assessed and taxed in the town where the lender resides, in the same manner as other money on interest. Nothing herein shall exempt any savings bank from the payment of its direct tax to the state. S. 2319.

Land Taken for Water Supply.—Land owned or taken by any municipal corporation for the purpose of creating or furnishing a supply of water for its use or benefit shall be exempt from taxation, when the inhabitants of the town in which said land is situated have the right to the use of and do actually use such water supply upon the same terms and conditions as the inhabitants of such municipal corporation; but otherwise said land shall be liable to taxation, and shall be set in the list in the town in which such land is situated, to the corporation owning or controlling such water supply, at a valuation which would be fair for said land, if used for agricultural purposes. S. 2321.

Tree Plantations.—When any person shall plant land not theretofore woodland, the actual value of which at the time of planting shall not exceed twenty-five dollars per acre, to timber trees of any of the following kinds, to-wit: chestnut, hickory, ash, white oak, sugar maple, European larch, white pine, black walnut, tulip, or spruce, not less in number than twelve hundred to the acre, and such plantation of trees

shall have grown to an average height of six feet, the owner of such plantation may appear before the board of relief of the town in which such plantation is located, and, on proving a compliance with the conditions herein, such plantation of trees shall be exempt from taxation of any kind for a period of twenty years next thereafter. S. 2320.

Railroad Companies, Dwelling-houses.—Every dwelling-house belonging to any railroad company shall be set in the list and taxed in the town where said dwelling-house is situated, notwithstanding the fact that the same may be rented to or occupied by an employee of said railroad company; and the amount paid for taxes on any such dwelling-house or houses shall be deducted from the sum required by law to be paid by such railroad company for taxes to the state. S. 2330.

Real Estate Liable to Taxation.—All property, not exempted, shall be liable to taxation as follows: Dwelling-houses, with the buildings and lots not exceeding two acres appurtenant thereto, mills, stores, distilleries, buildings used for manufacturing purposes, fisheries, and property in fish pounds designated and set out according to law, shall be set in the list at their present true and actual valuation. Lands and separate lots, except house lots, shall be set in the list at their average present and actual valuation by the acre. Quarries, mines, and ore beds, whether owned in fee or leased, shall be set in the list separately, at their present true and actual valuation, and, if owned by a corporation, the whole stock, property, and franchise shall be set in the list of the town where such quarry, mine, or ore bed is. All real estate shall be set in the list of the town where it is situated. S. 2322.

The machinery contained in a mill is taxable as a part of the mill, although the owners reside out of the state and the machinery may be personal property.—*Sprague v. Lisbon*, 30 Conn. 18.

On appeal from the action of a board of relief on the ground that property was assessed above its fair market value, the court will not consider the question of the valuation as compared with that of other real estate in the town.—*Ives v. Goshen*, 63 Conn. 79; *White v. Portland*, *Ibid.* 18.

Water power created by a dam in this state is taxable here as real estate, although transmitted to and used in an adjoining state.—*Quinebaug Reservoir Co. v. Union*, 73 Conn. 294.

A bridge structure, including its abutments, piers, spans, and other immovable parts, was not taxable as real estate of the company to which it belonged, but indirectly as a part of the capital stock of the company.—*Middletown & P. Bridge Co. v. Middletown*, 77 Conn. 314.

Personal Property Liable to Taxation.—All notes, bonds, and stocks, not issued by the United States, moneys, credits, choses in action, vessels, except registered and enrolled sailing vessels, barges engaged in trade between this and other states, and registered vessels which are actually engaged in foreign commerce, goods, chattels, or effects, or any interest therein, belonging to any resident in this state, shall be set in his list in the town where he resides at their then actual valuation, except when otherwise provided; but money secured by mortgage upon real estate in this state, when there is no agreement that the borrower

shall pay the tax, shall be set in the list and taxed only in the town where said real estate is situated. The provisions of this section shall not include money or property actually invested in merchandise or manufacturing carried on out of this state. S. 2323.

This section does not exempt railroad bonds which are the property of the persons holding them.—*Bridgeport v. Bishop*, 33 Conn. 187.

Damages for land taken by a railroad company, not paid until after the first day of October, were not taxable on October 1st to the person to whom they were awarded.—*Arnold v. Middletown*, 41 Conn. 206.

Money invested in bonds secured by deeds of trust on real estate in another state are taxable here.—*Kirtland v. Hotchkiss*, 42 Conn. 436.

Although personal property belonging to a non-resident is not generally taxable in this state, it may be taxed if given in by him.—*Phelps v. Thurston*, 47 Conn. 477.

A lease of land for a term of years for the sole purpose of mining, at a yearly rent and a fixed royalty, creates only a chattel interest in the grantee, which is not taxable as his property. The mine or quarry should be listed and taxed to the owner.—*Sanford's Appeal*, 75 Conn. 590.

Property in Another State.—The list of any person need not include any property situated in another state when it can be made satisfactorily to appear to the assessors that the same is fully assessed and taxed in such state to the same extent as other like property owned by its citizens; but the provisions of this section do not apply to moneys loaned by residents of this state to any party out of this state, as money at interest; nor to bonds issued by or loans made to, any railroad company located out of this state, when such bonds are owned, and loans made, by residents of this state. S. 2326.

The presumption is that foreign corporations are taxed in the State where they are located, and it is the duty of the assessors to ascertain that they are so taxed, and not of the taxpayer to prove that they are.—*Lockwood v. Weston*, 61 Conn. 211.

Rule of Valuation.—The present true and just value of any estate shall be deemed by all assessors and boards of relief to be the fair market value thereof, and not its value at a forced or auction sale. S. 2327.

Where assessors have adopted a rule of valuation conflicting with the statute, the only remedy of the tax-payer is by appeal to the board of relief.—*Monroe v. New Canaan*, 43 Conn. 309.

On appeal from over-valuation made by the assessors, the court will reduce the valuation when called for by justice and equity, and to conform to the rule adopted by the assessors.—*White v. Portland*, 63 Conn. 18; *Randell v. Bridgeport*, *Ibid.* 321.

For purposes of taxation, the assessed and the actual value of property are the same.—*Dennis' Appeal*, 72 Conn. 369.

Corporate Property.—The whole property in this state of every corporation organized under the law of this state, whose stock is not liable to taxation, and which is not required to pay a direct tax to this state in lieu of other taxes, and whose property is not expressly exempt from taxation, and the whole property in this state of every corporation organized under the law of any other state or country, shall be set in its

list and liable to taxation in the same manner as the property of individuals. S. 2328.

Bank stock belonging to the Hartford Fire Insurance Company, having an office in the city of Hartford, held not taxable in the town of Hartford.—*Hartford Fire Ins. Co. v. Hartford*, 3 Conn. 15.

Bank stock owned by a savings society, there being no clause of exemption in its charter, was held liable to taxation in the place where its office was established. Deposits in a savings bank are not stock.—*Savings Bank v. New London*, 20 Conn. 111.

The capital of a bank embraces all its property, real and personal, and the exemption of its capital from taxation includes its banking-house.—*New Haven v. City Bank of New Haven*, 31 Conn. 106.

What property is necessary for the transaction of its "appropriate business."—*Toll Bridge Co. v. Osborn*, 35 Conn. 7; *Osborn v. Railroad Co.*, 40 Conn. 498.

Where Listed; Stockholders Exempt.—The real estate of any corporation mentioned in section 2328 shall be set in the list of the town in which such real estate is situated, and the personal estate shall be set in the list of the town in which such corporation has its principal place of business, or exercises its corporate powers; and when it shall have two or more establishments for transacting its business in different towns, school districts, or other municipal divisions, it shall be assessed and taxed for every such establishment, and for the personal property attached thereto, or connected therewith, in the town, school district, or other municipal division having the power of taxation in which such establishment is; and the stockholders of any corporation, the whole property of which is assessed and taxed in its name, shall be exempt from assessment or taxation for their stock therein. S. 2329.

The principal place of business of a corporation is where the governing power of the corporation is exercised.—*Middletown Ferry Co. v. Middletown*, 40 Conn. 65.

The description of the property of an electric light company as the "plant of the Hartford Electric Light Company," was held sufficient for the purposes of taxation, when taken with other descriptive words in the list and abstract.—*East Granby v. Hartford Electric Light Co.*, 76 Conn. 169.

In order to secure a deduction from the market value of shares in an insurance company, it was necessary for the holder to show that some portion of the capital of the company was invested in real estate upon which it paid taxes.—*Bulkeley's Appeal*, 77 Conn. 45.

Personality in Trust, How Returned.—Every sole trustee residing in this state, having in his hands personal property liable to taxation belonging to the trust estate, shall make return thereof to the assessors of the town where he resides. If such personal property be in the hands of more than one trustee, then if they all reside in the same town they shall cause such return to be made by one of their number in such town. If they do not all reside in the same town they shall cause such return to be made by one of their number, residing in the town in which the affairs of said trust are managed and administered, to the assessors of such town; but if none of such trustees reside in such town, then they shall designate one of their number who shall make such return to the assessors of the town where he resides. If none of the trustees reside

in this state, the assessors of any town in this state in which any beneficiary resides shall set in the list of such beneficiary an amount of such personal property bearing the same proportion to the whole of said property as the amount of income received from said property by such beneficiary bears to the whole income of said property. S. 2337.

An executor or administrator, as such, during the settlement of the estate and before final distribution, is not a trustee within the meaning of the statute, which requires personal property in the hands of a trustee to be set in the list in the town in which such trustee resides.—*Cornwall v. Todd*, 38 Conn. 443.

The securities and other property forming the safety fund of an insurance company are not taxable in the hands of the trust company as property held in trust for the certificate-holders.—*Security Co. v. Hartford*, 61 Conn. 89.

This section refers to property invested in a permanent form, from which interest or income is to be derived.—*Brooks v. Hartford*, 61 Conn. 126.

Guardians' and Conservators' Returns.—All guardians and conservators shall make returns of the personal estate of their wards to the assessors of the towns in which such wards reside. S. 2338.

Insolvent Debtors and Decedents.—The estate of any insolvent debtor, or deceased person, not distributed or finally disposed of by the court of probate, and which is required to be set in the list for taxation, may be set in the list in the name of such estate, or of the trustee, administrator, or executor thereof, as such, at his option; and such property or any part thereof, when so set in the list, shall be liable for all taxes legally imposed thereon, for one year from the time when they become due. S. 2340.

The statute requiring the property of non-residents to be arranged in separate assessment-lists is merely directory to the assessors, and an assessment is not invalidated by their neglect to comply with the direction.—*Adams v. Seymour*, 30 Conn. 402.

The personal property of a deceased person, during the settlement of his estate, is taxable in the place of his domicile; when it comes into the possession of the heir or legatee, in the place where the heir or legatee resides; when it goes into the hands of a trustee, it must be taxed where the trustee or beneficiary resides.—*Cornwall v. Todd*, 38 Conn. 443.

The estate is to be treated in the collection of a tax as a living person would be treated; the limitation fixed by the statute determines only the time beyond which the tax lien shall not have precedence over other liens.—*White v. Portland*, 68 Conn. 293.

The succession-tax law, so called (G. S., SS. 2367-2377), upheld.—*Nettleton's Appeal*, 76 Conn. 235.

Tenant for Life or Years.—When one is entitled to the ultimate enjoyment of money at interest, land, or personal estate, and another is entitled to the use of the same as an estate for life, or for a term of years by gift or devise and not by contract, such estate shall be set in the list of the party in the immediate possession or use thereof, except when it is specially provided otherwise. S. 2341.

Real estate owned by and in possession of a tenant by the curtesy, should be listed in his name for taxation, even while the wife's estate is in process of settlement.—*White v. Portland*, 67 Conn. 272.

BOARD OF RELIEF.

Every town is required to elect annually a board of relief of not less than two nor more than five members. No assessor can be a member of the board. SS. 1802, 1800.

Meetings.—The board of relief in each town shall meet on the first Monday in January annually, having given at least ten days' previous notice of the time and place of such meeting by posting it on the public signposts in said town and publishing it in some newspaper published therein, if any there be, and may adjourn from time to time to a day not later than the fourth Monday of the following February, on or before which date said board shall complete the duties imposed upon it. S. 2346.

Appeals from Assessors.—At such meeting any person claiming to be aggrieved by the doings of the assessors of such town may appeal therefrom to such board of relief, which shall determine all such appeals, and may equalize and adjust the valuations and assessment-lists of said town; and, in so doing, may increase the items of taxable property in the list of any person, or the number, quantity, or amount of any such item, or add to any such list any taxable property or interest therein omitted by the assessors, and which should be added thereto; and may add to the assessment-list the name of any person omitted by the assessors and owning taxable property in such town, and make a list for him with the valuation of such property; and if any such person be a resident of such town, said board may fill out a list for him, putting therein all property which it has reason to believe is owned by him liable to taxation, at the actual valuation thereof, from the best information that it can obtain, and add thereto ten per cent. of such valuation; but before proceeding to increase the list of any person or to add to the assessment list the name of any person so omitted, it shall mail to him, postage paid, at least one week before making such increase or addition, a written or printed notice addressed to him at the town in which he resides, to appear before said board and show cause why the same should not be made. S. 2347.

The notice required to be given of a three-fold addition to a tax-payer's list should specify the kind and quantity of the property to be added.—*Whitelsey v. Clinton*, 14 Conn. 72.

Omissions or mistakes in a list of persons who make no complaint will not render the rate-bill and warrant void as to them.—*Sanford v. Dick*, 15 Conn. 447.

A note secured by mortgage, not paying interest, was held taxable; it made no difference that the addition to the creditor's list was made under the head of money at interest.—*Hamersley v. Franey*, 39 Conn. 176.

An "addition" without stating the character of the property by a board of relief held legal.—*Lewis v. Eastford*, 44 Conn. 477.

A non-resident whose personal property is unlawfully assessed waives no rights by not applying to the board of relief.—*Phelps v. Thurston*, 47 Conn. 477.

After the assessors have completed their valuation, their work is subject to review and correction by the board of relief, and by them only.—*State v. Fyler*, 48 Conn. 145.

A tax-payer is not aggrieved by the action of the assessors or board of relief, unless such action has worked an injury to himself.—*Ives v. Goshen*, 65 Conn. 456.

Reductions.—The board of relief may reduce the list of any person by reducing the valuation, number, quantity, or amount of any item of estate therein, or erasing therefrom any item which ought not to be retained in it, but shall not reduce the list of any resident of this state who shall not offer to be sworn before them and answer all questions touching his taxable property; and shall not reduce the list of any person not a resident of this state who shall not appear, either in person or by his attorney or agent, and offer to be sworn before them and answer all questions touching his taxable property situate in the town. S. 2348.

Indebtedness Deducted from List.—If any resident of this state shall be indebted to another resident of this state in such manner that the debt is liable to be assessed and set in the list of the creditor, and is not secured by mortgage on land in this state, the board of relief of the town where the debtor resides shall, on his request, deduct the amount of said debt from the list of said debtor, and shall add the same to the list of the creditor, if resident in the same town, and if said indebtedness is not already in said creditor's list; and if said creditor resides in any other town, said board of relief shall deduct said indebtedness from the listed property of said debtor, and give notice of said deduction to the board of relief of the town where said creditor resides, which may add a sum equal to that so deducted to said creditor's list, if said indebtedness is not already in said list; but no board of relief shall add to his list under the provisions of this section, without first giving him notice in the manner prescribed by section 2347 to appear and show cause why such addition should not be made; *provided*, that no board of relief shall exempt any amount from the tax-list of any person because of an indebtedness, upon which the tax has been paid according to the provisions of section 2325. S. 2349.

Under the law of 1889, a note secured by mortgage upon which the state tax had been paid was not subject to local taxation.—*Talcott v. Glastonbury*, 64 Conn. 575.

Not Reduce List Unnecessarily.—The board of relief shall not reduce the list of any person, or the valuation, number, quantity, or amount, of any item of property therein contained, erase any item, nor deduct any indebtedness therefrom, if he shall have refused or unnecessarily neglected to give in his sworn list to the assessors as prescribed by law; and if any board of relief shall so reduce any such list, its members shall forfeit fifty dollars to their town. S. 2350.

Limit of Reduction.—No greater amount of indebtedness shall be deducted from the list of any person than the assessed valuation of the

property, for which such indebtedness may have been contracted. S. 2351.

For purposes of taxation, the assessed and the actual value of property are the same.—*Dennis' Appeal*, 72 Conn. 369.

Section 2351 must be construed as restricting the operation of section 2349, and as impliedly prohibiting any deduction for unsecured indebtedness which was not contracted to obtain, and did not in fact obtain, for the debtor, taxable property which was afterward set in his list for taxation. Legislation for more than 100 years reviewed and commented on.—*Skilton v. Colebrook*, 76 Conn. 66.

Limit of Time for Appeals.—No appeal from the doings of the assessors in any town, or application for deduction of amount of indebtedness from the list of any debtor, shall be heard or entertained by the board of relief, unless preferred to it at its meeting on the first Monday of January, or at some adjourned meeting held within twenty days thereafter. S. 2352.

Abatement of Polls.—The assessors and board of relief may abate the polls of indigent, sick, or infirm persons in their respective towns, not exceeding one-tenth of the taxable polls; and shall give reasonable notice of the time and place of their meeting for that purpose. S. 2353.

BOROUGHES.

Since 1801, when the first charter was granted to the borough of Stonington, villages in Connecticut have been incorporated from time to time by special acts of the legislature under that general designation. The borough is a sort of miniature city in which the warden and burgesses correspond to mayor and aldermen. The act of incorporation takes effect on its acceptance by the vote of the inhabitants of the town in which the borough is situated.

Their officers consist usually of a warden and six burgesses, who constitute a council, with legislative and executive powers, a clerk, bailiff or sheriff, a treasurer, one or more auditors, two or more assessors, and a collector of taxes, who are elected by the freemen of the borough at their annual meeting. The warden is the chief executive officer of the borough, presides at all meetings of the freemen and of the borough council, and may call such meetings.

There is a considerable body of statutory law applying to boroughs, for which the reader is referred to the statutes.

BOX-TENDERS.

See "Registrars of Voters."

CAUCUSES.

The statutes relating to political primaries and caucuses (SS. 1720-1727) were repealed by an act of the legislature (C. 273, of the Acts of 1905). By the provisions of the Act of 1905, registrars and

deputy registrars of voters are required to make enrollments of voters for use at primaries and caucuses in much the same manner in which lists of voters are prepared for use at elections, and when the lists are completed twenty-five copies of each are filed with the town clerk, and other copies are delivered to the chairman of the town committee of each political party.

At any caucus or primary meeting of the enrolled voters of a specified party in any town or voting district, the chairman of the caucus or primary meeting is required, upon the receipt of a written motion from any person lawfully participating in the caucus or primary, calling for a vote by ballot upon any or all candidates before the caucus, as the motion shall designate, submit such motion to a rising vote of the caucus or primary; and, if twenty-five per cent. of the electors present and lawfully voting, shall vote in favor of the motion, the nominations specified in the motion shall be made by ballot. Tellers are then appointed and the ballots are cast and the voters' names checked upon the enrollment-list in the manner in which voting is usually conducted at general elections.

Violations of the provisions of the act are punished by a fine, or imprisonment, or both. The provisions of the act do not extend to any political party or political organization casting less than ten per cent. of the total vote of any town or city at the last previous election.

CHALLENGERS.

See "Registrars of Voters."

CITIZENS.

See "Voters."

CLERK.

See "Town Clerk."

COLLECTOR OF TAXES.

Election.—Every town at its annual town meeting elects a collector of town taxes; but the town of Middletown, beginning in 1903, elects, biennially, a collector for the term of two years. S. 1802.

No selectman shall hold the office of collector of town taxes during the same official year. S. 1813.

Whenever the performance of a public duty is imposed upon any person or corporation, the powers necessary to its full performance are impliedly, if not expressly and specifically, given.—*New Haven v. Sargent*, 38 Conn. 50.

The prohibition is directed against the holding by a selectman of other offices named, at the same time that he is a selectman, rather than creates a disability for that period. A selectman cannot be appointed collector by his own vote.—*State v. Fowler*, 66 Conn. 294.

Bond.— Every collector of taxes shall, before he receives any such warrant, give to the community of which he is collector, a bond with surety to the acceptance of the selectmen, committee, or authority signing the rate-bill, for the faithful discharge of his duties. S. 2382.

The sureties on a collector's bond are liable for interest on the money collected during the period from the date of the approval of the bond until payment, and on all moneys afterwards received and retained by him after it was his duty to pay them over.—*Hartford v. Franey*, 47 Conn. 76.

A collector cannot set off a claim on the city for his salary in an action against him for money collected and not paid over.—*Waterbury v. Lawlor*, 51 Conn. 171.

Appointment; Rate-bills; Warrants.— When any community, authorized to raise money by taxation, shall lay a tax, it shall appoint a collector thereof; and the selectmen of towns, and the committees of other communities, except as otherwise specially provided by law, shall make out and sign rate-bills containing the proportion which each individual is to pay, according to the assessment-list; and any justice of the peace, on their application, or that of their successors in office, shall issue a warrant for the collection of any sums due on such rate-bills. S. 2381.

If the selectmen make out a rate-bill on assessments which are illegal and void and cause a warrant to be issued thereon, they are responsible to those whose property is taken under such warrant.—*The Thames Mfg. Co. v. Lathrop*, 7 Conn. 550.

Where a tax was illegally assessed upon money, the action of *assumpsit*, for money had and received, is the proper remedy.—*Adam v. Litchfield*, 10 Conn. 127.

A tax warrant unaccompanied by any rate-bill is a dead letter, conferring no authority on the collector to take the property of any individual. A collector is empowered to collect the taxes in his rate-bill after the expiration of the year for which he was appointed, notwithstanding another collector has been appointed and sworn.—*Picket v. Allen*, 10 Conn. 146.

A justice who grants a warrant on a rate-bill regular and valid on its face, on application duly made, is not liable in trespass, although the tax was not legally imposed.—*Prince v. Thomas*, 11 Conn. 472.

A rate-bill is not invalid because it does not show on what list the tax was laid.—*Sanford v. Dick*, 15 Conn. 447.

The rate-bill must be signed by the selectmen, and if it is not so signed the warrant is void.—*Goddard v. Seymour*, 30 Conn. 394.

Where land is sold for non-payment of taxes legally laid and assessed, a court of equity will not decree a reconveyance of the property, unless the petitioner has first offered indemnity to the purchaser and has applied to him for reconveyance.—*Adams v. Castle*, 30 Conn. 404.

Where a tax collector sold bank stock in the collection of an illegal tax, and the stock was bought by an agent for the owner, it was *held* that the payment for the stock was not voluntary, and the money could be recovered back from the town in an action of *assumpsit*.—*Bailey v. Goshen*, 32 Conn. 546.

In a case where a party was illegally assessed but failed to apply to the board of relief, an action of trespass against the selectmen could not be maintained.—*Phelps v. Thurston*, 47 Conn. 477.

Forfeitures.— If the collector shall fail to collect and pay over the taxes within the time limited, or shall fail to deliver the tax-lists as required by law, to the town treasurer, he shall thereby forfeit his fees

for collecting the taxes, and the selectmen upon information, in writing, from the treasurer of such failure or neglect shall enforce such forfeiture, and any justice of the peace, upon application of the selectmen, shall grant an execution against the body and estate of such collector of the same form and to be levied in the same manner as executions in civil actions. SS. 2384, 2410.

Tax-book Open to Public Inspection.—The tax-book of any collector of town, city, borough, or school district, taxes shall be at all reasonable times open to the inspection of any tax-payer, and to any auditor of public accounts of such town, city, borough, or school district. Any collector who shall, after request, refuse to exhibit his tax-book as aforesaid, shall forfeit the sum of one hundred dollars to such town, city, borough, or school district, and such penalty may be recovered by an action on such collector's official bond. S. 2383.

Mistakes in Assessment, Reported.—The collector of town taxes in any town shall report to the town clerk all property liable to assessment therein which is not assessed or is assessed to wrong parties, as soon as such fact shall come to his knowledge, and the town clerk shall make a proper memorandum thereof to be kept in his office for the use of the board of assessors of such town. S. 2366.

Negligent Collectors, Proceedings Against.—If any collector of taxes shall fail to collect and pay the same within the time limited by the community imposing such tax, any justice of the peace, on application of its selectmen or committee, shall grant an execution against the body and estate of such collector, of the same form, and to be levied in the same manner, as executions in civil actions. S. 2384

A collector who is in default may be committed to jail without a trial.—*In re Application of Clark*, 65 Conn. 30.

New Collector, Appointment.—If any collector shall refuse to receive the rate-bill, or to give the bond required by law, or to collect and pay the tax within the time limited, and shall deliver up his rate-bill, the selectmen or committee of the community may depute some person to collect the sums due on such rate-bill, who shall give bond as prescribed in section 2382. S. 2385.

Removed.—If any collector of taxes shall neglect to perform the duties of his appointment, any judge of the superior court, on written application of the selectmen of the town, the mayor and aldermen of the city, the warden and burgesses of the borough, or the committee of the community, which laid the taxes, and upon due notice and hearing, may remove him from office. S. 2386.

When Salaried, Powers.—All town collectors whose compensation is fixed by a salary, and not by a rate of commission shall, during their terms of office, have authority to collect all taxes due their towns, hav-

ing proper warrants therefor, and may execute such warrants in any town; and shall deliver to their immediate successors the rate-bills not fully collected, upon the expiration of their terms of office. S. 2389.

A collector who is compensated by a salary is bound to deliver over his rate-bill to his successor at the expiration of his official term.—*Castle v. Lawlor*, 47 Conn. 340.

When Paid by Commission, Powers; Deputies.—Collectors paid by commission may execute their tax warrants in any town at any time, though after the expiration of the year limited for the collection of the tax; and all collectors shall have the same powers as sheriffs in executing their office, and may when authorized so to do by the selectmen, or mayors of cities in towns where the powers of selectmen are limited to the duties prescribed by the Constitution, depute in writing any sheriff, deputy sheriff, or constable for the service of warrants for the collection of any poll or military commutation taxes, or taxes assessed on personal property only; and the officer so deputed shall have all the powers of the tax collector regarding the taxes so committed to him for collection. S. 2390.

Where a collector levies on property in one town and posts his notice of sale and sells in another, he makes himself liable in trespass.—*Prince v. Thomas*, 11 Conn. 472.

Where one pays money voluntarily upon a claim made in good faith without fraud, mistake, or duress, he cannot recover it back.—*Sheldon v. School District*, 24 Conn. 88; *Goddard v. Seymour*, 30 Conn. 394.

Where one pays a collector an illegal tax under coercion, the money remains the property of the tax-payer and may be recovered back.—*Hubbard v. Brainard*, 35 Conn. 563.

Mandamus lies against a collector, although a remedy at law exists against him and the sureties on his bond.—*State v. Fyler*, 48 Conn. 145.

An appeal to the board of relief does not stop the running of interest on an unpaid tax.—*Hartford v. Hills*, 72 Conn. 599.

Notice that Taxes are Due; Interest.—Every collector of town taxes shall, except as otherwise specially provided by law, publish a notice of the time and place at which he will receive them, by advertising in a newspaper published in the county at least once a week for three successive weeks next preceding the time in such notice appointed, and by posting on a signpost in his town at least three weeks before said time; and collectors of other taxes shall appoint a time and place for receiving the same, and give reasonable notice thereof; and if any tax laid by any town, city, borough, or school district, except as otherwise specially provided by law, shall remain unpaid for one month, after the same shall become due and payable, interest at the rate of nine per cent. shall be charged from the time when such tax becomes due until the same shall be paid, which shall be collectible as a part of said tax; and said collectors shall keep an accurate and separate account of all such additions, and the time when the same may be received, and shall pay over the same as a part of said tax. S. 2391.

Taxes Due, When.—Taxes shall become due on the first day on which the collector thereof, according to the terms of the notice given by him, is ready to receive them. S. 2393.

Demand; Levy; Arrest.—If any person shall fail to pay any tax, the collector shall, if such person be a resident of the town wherein the tax is laid, make demand of him therefor, or leave written demand at his usual place of abode. If such person be not a resident of the town, the collector shall make demand of him therefor, or deposit in some post-office in said town a written demand for said tax, postage prepaid, addressed to such person at his last known place of residence. After demand shall have been made in the manner above provided, the collector may levy for said tax on any taxable goods and chattels of such person, and post and sell them in the manner provided in case of executions; but if no such goods or chattels belonging to such person can be found after reasonable search by the collector, he may enforce by levy and sale any lien upon real estate for said taxes, or he may levy upon and sell such interest of the person in any real estate as exists at the date of the levy, or he may levy on the body of such person and commit him to jail, there to remain until he shall pay such tax and the legal costs, or be discharged in due course of law. S. 2394.

A demand by the collector is necessary before a levy, but it does not make the tax due.—*Goddard v. Seymour*, 30 Conn. 395.

An injunction will not be granted to restrain the collection of public taxes.—*Waterbury Sav. Bank v. Lawler*, 46 Conn. 243; *Rowland v. School District*, 42 Conn. 30; *Arnold v. Middletown*, 39 Conn. 401.

One whose duty it is to pay a tax cannot purchase the property offered for sale for the tax; the payment of the money will be regarded as a payment of the tax and not as a purchase of the property.—*Middletown Sav. Bank v. Bacharach*, 46 Conn. 513; *Goodrich v. Kimberly*, 48 Conn. 395.

A court of equity will not, as a rule, restrain the collection of taxes, yet it will not refuse to restrain a tax collector by injunction where the party whose property is involved is not the tax debtor, and the property is not that on which the tax was laid.—*Seeley v. Westport*, 47 Conn. 294.

A collector has no right to hold a tax debtor in jail under a warrant for the collection of taxes until he has paid the fees which are illegal.—*Wilcox v. Gladwin*, 50 Conn. 77.

Poll and Military Taxes.—When any person shall neglect or refuse to pay any poll or military tax assessed against him, after payment of the same has been legally demanded, the tax collector of the town may prefer his complaint to any justice of the peace of the town, and such justice shall thereupon cause such delinquent tax-payer to be arrested and brought before him. If, upon a trial upon such complaint, the accused is found guilty of the charge preferred against him, the justice shall order the accused to stand committed to the jail or work-house in the county, until such tax with the interest thereon and all costs of the proceeding shall be paid. The person so committed is required to do such work as his physical condition will allow, and is discharged when his labor, at the rate of one dollar a day, amounts to his fine and costs. The delinquent is charged for his board while so con-

fined at the rate of two dollars and twenty-five cents for each week of his commitment. S. 2395.

Foreclosure.—The tax collector of any town may bring suit for the foreclosure of tax liens in the name of the town, and all communities having tax liens upon the same piece of land may join in one complaint for the foreclosure of the same, in which case the amount of the largest tax shall determine the jurisdiction of the court, and the court having jurisdiction may limit a time for redemption, or order the sale of the property, or pass such other decree as it shall judge proper. S. 2397.

Equity, Sale Under Tax Levy.—In selling, under the levy of a tax warrant, the equity of redemption, or interest for life or years, which any person has in any real or personal estate, in case it is unnecessary to sell the whole thereof, an undivided portion shall be sold, unless it be an interest for a term of years, in which case the sale shall be of the whole interest for a definite portion of said term. S. 2398.

Mode of Selling Land.—When a collector shall levy a tax warrant on real estate, he shall prepare duplicate notices thereof, containing the name of the tax-payer, the amount of the tax, a description of the property levied upon, and the time and place of sale, one of which he shall post on that signpost in the town where the land to be sold is situated, which is nearest to said land, and the other he shall file in the town clerk's office of said town, which posting and filing shall be done not more than ten and not less than nine weeks before the time of sale, and shall constitute a legal levy of said warrant upon the real estate therein referred to. He shall also publish a similar notice for three successive weeks, at least once a week, in a newspaper published in said town, if any there be; otherwise in a newspaper published in the county, beginning not more than ten and not less than nine weeks before the time of sale. He shall also send by mail, postage prepaid, to the delinquent tax-payer and to each mortgagee, lien holder, and other record incumbrancer, whose interest in said property will be affected by said sale, a similar notice at least four weeks before said sale, addressed to his place of residence, if known to the collector, otherwise to his place of residence as given in the records of said town. Said collector, if he deem it desirable, may adjourn said sale from time to time by causing public notice of such adjournment and the time and place of such adjourned sale to be given at the time and place mentioned in said notices. At the time and place mentioned in said notices, or, if said sale be adjourned, at the time and place specified at the time of adjournment as aforesaid, said collector shall sell at public auction enough of said estate to pay the taxes with the interest allowed by law and his fees, and within one week after such sale shall execute a deed thereof to the purchaser and lodge the same in the office of the town clerk of said town, where it shall remain unrecorded one year from the date of such sale, and if the delinquent tax-payer or any person interested in the

estate shall within such time pay or tender to the purchaser the amount paid by him, with twelve per cent. interest, such deed shall be delivered to the person paying or tendering the money who, if not the person whose primary duty it was to pay the tax, shall have a claim against the person whose primary duty as between themselves it was to pay said tax for the amount so paid, and may add the same to any claim for which he has security upon the premises sold. If the purchase money and interest shall not be paid within said year, the deed shall be recorded and have full effect. S. 2399.

Several collectors cannot unite in one deed of lands sold by them severally for taxes.—*Humphry v. Boge*, 2 R. 437.

Under the provisions of the revision of 1821, publication on the sign-post in the town where the land lay and in a newspaper printed in the county was sufficient notice. A demand of personal property before taking real estate was not necessary.—*Ives v. Lynn*, 7 Conn. 505.

A demand is not necessary to make a tax due, but must be made before a levy.—*Goddard v. Seymour*, 30 Conn. 401.

Where more than sufficient real estate is sold for taxes, the part sold must be described by metes and bounds and not an undivided interest, unless the interest of the tax debtor is already an undivided one.—*Townsend Saving Bank v. Todd*, 47 Conn. 190.

Tax Liens, Continuance of; Discharge.—The tax collector of any town may continue any tax lien upon any real estate by causing to be recorded in the land records of the town in which the real estate is situated, within the first year after the tax becomes due, his certificate describing the real estate, the amount of the tax, and the time when it became due; and thereupon such tax, with the interest thereon at seven per cent. per annum in lieu of nine per cent., shall remain a lien upon such real estate from the recording of such certificate until paid; and any tax lien so continued, when the tax has been paid, may be discharged by a certificate of the then collector of taxes recorded in such land records. S. 2403.

A certificate of lien which covered both the building and land on which it stood was not invalidated by including the land.—*Russell v. New Haven*, 51 Conn. 259.

A certificate which stated a certain sum to be the amount of a tax and interest on the same, but furnished no data by which the correct amount of the tax could be ascertained, was held not to comply with the statute.—*New Britain v. Savings Bank*, 67 Conn. 528.

Incumbrancers, Notice to.—No collector of taxes shall levy upon and sell under his warrant any real estate which is subject to a mortgage, lien, or other incumbrance appearing of record at the time of such levy, unless he shall have sent by mail, postage prepaid, a written notice directed to the holder of every such mortgage, lien, or incumbrance, at least four weeks before such sale, in manner and form as specified in section 2399. S. 2405.

The statute does not qualify the owner of the equity of redemption to acquire by purchase at a tax sale a title to property which should divest the rights of mortgagees.—*Goodrich v. Kimberly*, 48 Conn. 395.

Poor Debtor's Oath Taken.—When any person, committed to jail by the collector for non-payment of any tax, except pol and military taxes, shall be poor and unable to pay it, he may apply to take the poor debtor's oath, giving the requisite notice to one of the selectmen laying such tax; and if admitted to take such oath, the community shall pay such collector the amount of the tax, and the costs occasioned by the commitment therefor, if made within eight months after the time when such tax became payable. S. 2406.

Suit, Collection by.—All taxes, properly assessed, shall become a debt due from the person, persons, or corporations, against whom they are respectively assessed, to the city, town, district, or community in whose favor they are assessed, and may be, in addition to the other remedies provided by law, recovered by any proper action, in the name of the community in whose favor they are assessed. The bringing of such action does not affect the life of the lien, or the right of foreclosure given by section 2403. S. 2407.

The statute gives a simple remedy for the collection of taxes by an ordinary action.—*Waterbury v. Schmitz*, 58 Conn. 522.

The special provisions under a city charter for the collection of taxes do not exclude from application the general provisions of the statutes.—*Meyer v. Burrill*, 60 Conn. 117.

An action by the state for the collection of taxes from a railroad company is warranted by usage if not authorized by the statute.—*State v. Railroad Co.*, 60 Conn. 326; *State v. Travelers' Ins. Co.*, 70 Conn. 590.

One who held the offices of collector of taxes for both the town and city of Hartford died before his term of office expired, and another having been elected collector of town taxes during such term, it was held that he was not "remaining collector" within the meaning of the statute, and could not collect the taxes for the city.—*State v. Fowler*, 66 Conn. 294.

An assessment by municipal authority upon property expressly benefited by local improvement is a tax.—*Sargent v. Tuttle*, 67 Conn. 162.

Monthly Payments.—Every collector of town taxes shall, on or before the fifth day of every month, pay to the town treasurer all moneys collected by him previous to the first day of that month, as taxes and interest thereon, and shall at the same time deliver to said treasurer a complete list of the names of the persons from whom said moneys were collected, stating therein the amount of principal and interest paid by each person named on said list, and the time of such payment. S. 2408.

Fees Forfeited.—If the collector of any town shall retain said moneys or lists, or neglect to pay said moneys or deliver said lists, as above required, he shall thereby forfeit his fees for collecting said moneys, and the treasurer shall forthwith inform the selectmen of such town, in writing, of such retention or neglect, and said selectmen shall enforce said forfeiture. S. 2410.

CONSTABLES.

Election.—Every town shall at its annual meeting elect, except the town of Hartford, not more than seven constables. They are chosen by ballot, to serve one year.

In Hartford beginning with the annual town meeting on the first Monday of April, 1903, and quadrennially thereafter there shall be chosen seven constables for more than four of whom no person shall vote, who shall hold office for the term of four years, beginning on the first Monday of June next following their election. SS. 1802, 1806, 1808.

Ineligibles.—The office of constable shall not be held by a judge of any court, except a judge of a court of probate, nor by a justice of the peace. S. 1883.

No person not a citizen of this state shall be appointed a special constable or policeman. But this provision shall not be construed to prevent the governor appointing any regular employee of any railroad or steamboat company a special officer. S. 1887.

The acceptance of the office of constable by a person holding the office of justice of the peace is of itself a surrender of the latter office.—*Magie v. Stoddard*, 25 Conn. 565.

Oath Recorded.—Every person elected to the office of constable in any town shall before the commencement of his term of office, or within thirty days thereafter, take the oath of office before some proper officer, who shall certify in writing to that fact and deliver the certificate to the person by whom the oath was taken; and such person shall, without delay, lodge said certificate for record in the office of the town clerk of the town in which he was elected constable, and said clerk shall record the same. If such person shall not comply with the requirements of this section, his office shall be vacant. S. 1820.

Bond.—No person shall enter upon the duties of constable until he shall have given a bond payable to the town, with surety to the acceptance of its selectmen, conditioned that he will faithfully discharge the duties of his office and answer all damages which any person may sustain by reason of his neglect or unfaithfulness in the discharge thereof; which bond in towns not exceeding two thousand inhabitants shall be in a sum of not less than five hundred dollars, and in all other towns in a sum of not less than one thousand dollars. The failure of any person elected as constable to file his bond with the selectmen, within thirty days after the time for the commencement of his term of office, shall render his office vacant, and the vacancy may be filled in the manner provided for filling vacancies in town offices. S. 1884.

An officer who has not given an official bond may act as an officer *de facto*, and his acts as such will be valid, and cannot be called in question in a suit in which he is not a party.—*State v. Brennan's Liquors*, 25 Conn. 278; *Soudant v. Wadhams*, 46 Conn. 218.

The seizure of goods of A. upon a writ of attachment against B. is a breach of the condition of the officer's bond for which his sureties are liable.—*Norwalk v. Ireland*, 68 Conn. 1.

Powers, General; Assistance.—Constables shall have the same power in their own towns, to serve and execute all lawful process legally directed

to them, as sheriffs have in their respective counties, and shall be liable in the same manner for any neglect or unfaithfulness in their office.

Constables, when necessary, may command any person to assist them in the execution of the duties of their office. SS. 1885, 1886, 899.

An officer is bound by his precept and unless it be void on its face he cannot look to the circumstances which induced the direction. A justice of the peace has a right to issue his execution through the state if he finds it necessary to give it effect, and it is at his discretion.—*Gilbert v. Rider*, K. 182.

An execution returnable according to law runs to the next court.—*Worthington v. Hollister*, 1 R. 101; *Keyes v. Chapman*, 5 Conn. 169.

Where an execution is served upon chattels and is not returned, the levy is not invalidated; it is otherwise with mesne process.—*Pratt v. Pond*, 45 Conn. 386.

Arrest Without Warrant.—Any constable acting within his town may without a warrant arrest any person whom he finds in the act of violating the law concerning spirituous and intoxicating liquors, and may seize and keep in some safe place all such liquors, vessels and implements of sale in the possession of such person, until warrants can be procured for such arrest and seizure. S. 2721.

He has power also within his precinct to arrest without previous complaint and warrant any person for any offense within his jurisdiction when the offender is taken or apprehended in the act or on the speedy information of others. S. 1770.

Every constable is authorized to arrest any boy who has escaped from the state school at Meriden, and may arrest within his precinct any girl whom he shall judge to be between the ages of eight and sixteen years whom he may find in any improper place or situation, and who in his judgment should be committed under any provision of section 2839. SS. 2833, 2840.

Constables are authorized to arrest in their precinct all boys between seven and sixteen years of age who habitually wander or loiter about the streets, or public places, or anywhere beyond the proper control of their parents or guardians during the usual school hours of the school term, and the constable, if upon inquiry of any boy under sixteen years of age he ascertains that such boy is a truant, may return him to school. S. 2124.

An arrest by a constable upon a warrant issued by a justice other than the one to whom the complaint was addressed, held illegal.—*Perry v. Johnson*, 37 Conn. 32.

An arrest being lawful, the presumption is that the officer had done his duty.—*Powers v. Mulvey*, 51 Conn. 432.

The law will not protect an officer in doing that which it has expressly commanded him not to do. Where an officer attempts to attach property exempt from attachment, the owner has the right of reasonable resistance.—*State v. Hartley*, 75 Conn. 104.

Cemeteries, Offenses in, Arrest for.—The superintendent or keeper of any cemetery, graveyard, or place of public burial, and any constable of the town in which such cemetery, graveyard, or place of public burial, is situated, may arrest, on view, any person violating section

1378, and carry him before a justice of the peace, or other authority having cognizance of the offense, which authority shall, on the oath of the superintendent or keeper, or of such constable, issue a warrant and cause such person to be arrested, and shall proceed to a hearing and trial thereon. S. 1379.

Court Attendants.—The superior court, court of common pleas, criminal court of common pleas and the district court of Waterbury when in session, in the absence of the sheriff of the county in which such court is held, when a jury is in attendance shall be attended by one constable or a deputy sheriff, but the presiding judge may authorize the attendance of extra constables. S. 511.

No constable shall appear in court as attorney. S. 752.

Dog Laws Enforced.—Constables, grand jurors and all prosecuting officers shall diligently inquire after and prosecute any violation of the provisions of the law. S. 4488.

Inebriate Asylums, Assist Managers.—Constables shall assist the managers, trustees and directors of any inebriate asylum established by law, in the exercise of the powers and discharge of the duties vested by law in such managers, trustees and directors. S. 2747.

Loiterers, Disperse.—Every constable on having knowledge of any assembly of three or more persons loitering or idling in his jurisdiction, upon any highway, sidewalk, or bridge, or upon any fence or structure adjacent thereto so as to hinder travel, may command them immediately to disperse. S. 1280.

Riotous Assemblies.—Every constable, having notice of any riotous assembly of three or more persons, met with intent to do any unlawful act with force against the peace, is required to resort to the place of such meeting and assembly, or as near thereto as he can with safety, and audibly command silence to be observed, and then and there by proclamation in the name of the state command all persons assembled immediately to disperse on penalty of the law; and if such persons do not thereupon disperse, he may command assistance from all persons present to arrest such rioters, and forthwith carry them before proper authority. S. 1277.

A justice cannot bind over a person engaged in a riot without a complaint and warrant.—*Tracy v. Williams*, 4 Conn. 107.

Taxes, Collection.—Collectors of taxes may depute in writing any constable for the service of warrants for the collection of any poll or military commutation taxes, or taxes assessed upon personal property only; and the officer so deputed shall have all the powers of the tax collector regarding the taxes so committed to him for collection. S. 2390.

Tramps; Definition; Arrest.—Any act of beggary, or vagrancy, by any person not a resident of this state, shall be *prima facie* evidence that such person is a tramp.

Any constable, special constable, or policeman upon view of any offense described in sections 1336, 1337 or 1338 of this chapter, or on speedy information thereof may without warrant apprehend the offender and take him before any competent authority. SS. 1337, 1339.

The provisions of sections 1336 to 1340, both inclusive, shall not apply to any female, or minor under the age of sixteen years, nor to any beggar roving within the limits of the town in which he resides. S. 1341.

ELECTORS.

Qualifications.—Every male citizen of the United States who has attained the age of twenty-one years, has resided in this state for one year next preceding and in the town in which he may offer himself to be admitted as an elector at least six months next preceding the time when he so offers himself, and who at such time is able to read in the English language any article of the Constitution or any section of the statutes of the state, and who sustains a good moral character shall on taking the oath prescribed by law be an elector; provided, however, that any new or additional qualification imposed by law shall not be required of any person who has heretofore been admitted to the privileges of an elector in this state.

Any person who has during his minority been convicted three or more times of any offense punishable by the laws of this state with imprisonment, or with fine and imprisonment; or who has, within twelve months before reaching his majority, been convicted of any offense mentioned in section three of article six of the Constitution (bribery, forgery, perjury, duelling, fraudulent bankruptcy, theft, or other offense for which an infamous punishment is inflicted); or who, at the time of reaching his majority, was serving a term in jail or prison for any such offense; any person who is insane or an idiot shall not be admitted as an elector. SS. 1593, 1594.

Registration.—Registration is a pre-requisite to the admission of a person to be an elector. The provisions of law relating to registration will be found under the title of "Registrars of Voters."

Blind Electors.—No person otherwise qualified to be an elector shall be ineligible by reason of blindness or defective sight; but if the applicant is able to write any article of the Constitution or any section of the statutes of this state from dictation, or read the same in raised print or the point characters used by the blind, it shall be sufficient evidence of his ability to read as required by law. S. 1595.

Women Voters.—Every woman who has attained the age of twenty-one years, is a citizen of this state or of the United States, and who has resided in the state one year, and in the town six months, and can read the English language, shall, after having been duly admitted, have the right to vote for any officer of schools, and upon any question relating to education or to schools. S. 1629.

Women are required to register in much the same manner as men, and separate voting-lists for them are prepared by the registrars of voters, and used at elections in towns and voting-districts for school officers and committees. SS. 1630, 1631.

FENCES.

See "Selectmen."

Fence-viewers.—The office of fence-viewer, as created by statute (S. 4083), applies only to common fields. For his duties the reader is referred to that title under chapter 231 of the General Statutes. The duties usually discharged in other states by these officers are performed in Connecticut by the selectmen.

FIRE DISTRICTS.

See "Selectmen."

GRAND JURORS.

Not less than two nor more than six grand jurors are elected annually by ballot at the annual town meeting in every town to serve for one year from the date of their election. There is a provision of the statute which requires, in case of the election of two, four, or six officers, no person shall vote for more than one-half the number. This rule applies to grand jurors. SS. 1802, 1806, 1810.

Duties.—It is the duty of the grand jurors of a town to inquire diligently after, and make due complaint of all crimes and misdemeanors, that shall come to their knowledge, except in towns where by law those duties are devolved on other officers exclusively; and said complaint is made to the court having cognizance of the offense, or to some justice of the peace in the town where the offense was committed. S. 1878.

They are required to make complaint and to prosecute for certain minor offenses, and have the power of constables and other officers of the peace to disperse loiterers and riotous assemblies; they are required also to make and prosecute complaints for violations of the liquor laws. SS. 1248, 1488, 1280, 2686.

Inquests.—The grand jurors in each town, or any three of them, may meet to advise concerning offenses committed in the town, and may call before them at such meetings any witnesses to be examined touching the same, and if any person shall refuse to appear before them at such meeting, being summoned by competent authority, the grand jurors may apply to a justice of the peace for a *capias*, who may issue one to bring such person before them; and if any person appearing or being brought before such grand jurors shall refuse to be sworn, or being sworn, shall refuse to answer any proper question, they may complain to any justice of the peace in the county, who shall cause such person to

be brought before him, and commit him to jail, there to remain at his own expense, until he shall give evidence as required. The state's attorney of the county and the prosecuting attorney of any city, borough, town, or police court, may assist and participate in such inquest. Grand jurors also have all the powers of a justice of the peace, when holding court, to commit for contempt. S. 1881.

Town By-laws and Regulations; Information of Crime.—They may make complaint for any violation of any by-law or regulation, imposing a penalty, to a justice of the peace in the town where the offense is committed. They may also require any person informing them of the commission of a crime to make information under oath and may administer the witness' oath to him. SS. 1879, 1880.

HEALTH OFFICER.

The county health officer is required to appoint for each town some discreet person, learned in medical or sanitary science to be health officer for the town, except in towns containing a city or borough, whose limits are coterminous with the limits of such town. The town health officer has and exercises all the powers necessary and proper for preserving the public health and preventing the spread of diseases. He holds his office, except when appointed to fill a vacancy, for four years from and after the first Monday of October, unless sooner removed. S. 2521.

Duties.—It is his duty to examine into all nuisances and sources of filth injurious to the public health, cause such nuisances to be abated, and cause to be removed all filth found which in his judgment may endanger the health of the inhabitants. He may upon written complaint of any person and upon finding any swampy or wet places or depressions which are a source of danger to the public health, cause such places or depressions to be filled with suitable material or drained. He may determine the time during and the manner in which manure and other fertilizers may be unloaded from vessels and cars and transported upon the highways in his town, and may make orders and regulations controlling the same. His jurisdiction extends to any stream or body of water, which is contiguous to, although not wholly within, the limits of the town, and to the islands situated therein.

No regulation adopted by a town health officer is valid until it has been approved by the state board of health. Notice of any regulation is sufficient if printed in a newspaper published in the town or posted for three days on any signpost in the town. SS. 2525–2530.

Quarantine.—The health officer has jurisdiction over vessels entering the waters contiguous to his town for the purpose of enforcing all quarantine regulations, and over the officers, crew, passengers, and cargoes of such vessels, and he may enforce such regulations by process

from any justice court or other court of competent authority. SS. 2536-2544.

Under the provisions of General Statutes, 2517-2552, relating to health officers, a town is liable for the reasonable value of services rendered and expenses incurred at the request of its health officer, in guarding quarantined premises during the prevalence of small-pox therein, and for necessary articles for those afflicted with the disease.—*Keefe v. Union*, 76 Conn. 160.

Reports.—The health officer is required annually, on the first of September, to make a report of his doings to the town in which he is appointed, which report shall be published with other town reports; and he shall cause duplicates of such report to be filed with the county health officer, and with the state board of health. S. 2522.

Vaccination.—He may adopt such measures for the general vaccination of the inhabitants of his town as he may deem proper and necessary to prevent the introduction or arrest the progress of small-pox. He may interdict communication between his town or any town or place in which a contagious or malignant disease is prevalent. SS. 2550, 2545.

HIGHWAYS, BRIDGES AND FERRIES.

See "Selectmen."

Intoxicating Liquors, Defined.—The term "spirituous and intoxicating liquors," as defined by statute, includes all spirituous and intoxicating liquors, all mixed liquors, all mixed liquor of which a part is spirituous and intoxicating, all distilled spirits, all wines, ale, and porter, all beer manufactured from hops and malt, or from hops and barley, and all beer on the receptacle containing which the laws of the United States require a revenue stamp to be affixed, and all fermented cider sold to be drunk upon the premises, or sold in quantities less than one gallon to be delivered at one time in towns where licenses to sell intoxicating liquors are granted, or in quantities less than five gallons to be delivered at one time in towns where licenses are not granted. S. 2636.

Vote on License.—A vote may be taken at any annual town meeting upon the question of granting a license to sell such liquors upon application of not less than twenty-five legal voters to the selectmen, who shall notify the legal voters of the town that such a vote will be taken at the next annual meeting. The vote is taken by ballot and remains in force until annulled by a new vote at a subsequent annual meeting upon petition and after due notice, which vote shall become operative upon the first Monday of the month next succeeding said town meeting. S. 2638.

The act of 1847, authorizing county commissioners to grant licenses in the several towns of the county on the recommendation of the selectmen of the towns, etc., upheld.—*State v. Wilcox*, 42 Conn. 364.

A ballot taken upon the question of a license at a town meeting where town officers were at the same time voted for, was not void because not placed in a separate ballot-box.—*Donovan v. Fairfield County Commissioners*, 60 Conn. 339.

The provisions of the general election law, with reference to counting and rejecting of ballots, do not apply to ballots cast on the question of licenses.—*State v. Bossa*, 69 Conn. 335.

Licenses.—Licenses to sell or exchange spirituous and intoxicating liquors in towns which have adopted the license plan are granted by the county commissioners of the county in which the town is situated, to such persons and upon such terms and conditions as are prescribed by law. CC. 157, 158.

Justices of the Peace.—Justices of the peace are elected biennially at the electors' meetings held for the choice of state officers and representatives. The number of justices for each town is equal to one-half the number of jurors to which the town is entitled; but no person shall vote for more than one-half that number, if it be even, or for more than a bare majority, if the number be odd. SS. 415, 416.

Term of Office.—The official term of justices of the peace elected at the biennial electors' meetings begins on the first Monday of January succeeding their election and continues until the first Monday of January after the next biennial election; and any person elected a justice of the peace to fill a vacancy holds office from the date of his election until the first Monday of January succeeding the next biennial election. S. 417.

Official Oath.—Justices of the peace chosen at the biennial electors' meetings may take the official oath at any time between the date of their election and the tenth day of the succeeding January; but if chosen at a special election to fill a vacancy, then within ten days thereafter; and any person who shall not take the oath required by law within the prescribed time shall be deemed to have declined said office, and an election to fill the vacancy may be held. S. 418.

Vacancy, How Filled.—The electors of a town may fill any vacancy in the office of justice of the peace, at any meeting held for that purpose; and such a meeting shall be held when requested in writing by twenty or more of said electors, and shall be warned and conducted in the same manner as if it were a biennial electors' meeting. S. 421.

Duties.—The duties of a justice of the peace are defined by the statutes (C. 40). They are county officers and their functions and powers are not limited to the town in which they are chosen and to which they belong. Their courts are courts of record. For a further account of their duties and powers the reader is referred to the statutes.

PUBLIC LIBRARIES.

Any town may establish a public library the use of which, under proper regulations, shall be free to its inhabitants, and may expend such sum of money as may be necessary to provide and furnish suitable rooms, or a suitable building, for the library so established, or for a previously existing public library, the use of which is free to its inhabitants. S. 4624.

Appropriations; Gifts.— Any town may annually expend such sum of money as shall be necessary for the proper maintenance and increase of a free public library within its limits; and may fix by a proper by-law the amount which shall be annually expended for the same.

Any town may receive, hold, and manage any devise, bequest, or gift for the establishment, increase, or maintenance of a public library within its limits. SS. 4625, 4626.

Directors.— In the absence of any other lawful provision for the management of a public library in any town, the town shall elect a board of directors who shall manage such library. Such board may make by-laws not inconsistent with law for their own government, and may adopt rules controlling the use of the library and the administration of its affairs; and they shall have the exclusive right to expend according to their best judgment all money appropriated by the town for the library, and shall have control of the library grounds, buildings, and rooms. S. 4629.

Election.— The number of directors constituting the board shall be first determined by a by-law of the town, to be adopted at the meeting for the first election of the board, and the number of electors shall be divisible by three. One-third of this number shall then be elected by ballot, to hold office until the next annual meeting, one-third until the second annual meeting, and one-third until the third annual meeting thereafter. At each subsequent annual meeting of the town, one-third of the directors shall be elected by ballot to hold office for three years. No director so elected shall receive compensation for any services rendered as director. S. 4630.

MEASURERS OF WOOD.

The selectmen of each town may appoint annually and oftener, if necessary, two or more of its inhabitants to be measurers of wood, offered for sale within the town, who shall be duly sworn and receive such compensation for their services as the town may prescribe. S. 1891.

MILITIA.

See "Selectmen."

MODERATOR.

Town Meetings.— All towns when lawfully assembled for any other purpose than the election of town officers have power to choose a moderator to preside at such meetings, unless it be by law otherwise specially provided. It is the duty of the moderator when any disorder arises in the meeting and the offender refuses to submit to his lawful authority, to order any proper officer to take him into custody and, if necessary, to remove him from the meeting until he shall conform to order, or if need be until the meeting shall be closed. SS. 1797, 1817.

The moderator is required to make return and to transmit to the secretary of state and to the clerk of the probate court of the district in which the town is situated a certified return of the name of the registrar of births, marriages, and deaths, and of the town clerk, if said clerk is *ex-officio* registrar of births, marriages, and deaths, who may have been elected at a town meeting. SS. 1817, 1818.

Electors' Meetings.—Moderators of electors' meetings are appointed by the registrars of the different voting-districts, and in case they fail to agree, the choice is determined between them by lot; and in like manner the registrars appoint the moderators to have charge of any vote by ballot in town meetings for the election of officers. S. 1642.

Duties.—It is the duty of the moderator to place the ballot-boxes before the box-tenders in a situation convenient of access by the electors, and generally to have charge and direction of the voting. In case of doubt or dispute as to the reading of a ballot, or whether a ballot should be rejected for any cause, the moderator decides. The moderator is required before adjournment to declare publicly the result of the count. It is his duty to make out and return to the secretary of state a full statement as to the envelopes and ballots as returned to him at elections for presidential electors and for governor and other state officers, and representatives in Congress. SS. 1646, 1656, 1657, 1663.

OVERSEERS OF THE POOR.

See "Selectmen."

PAUPERS.

See "Selectmen."

POUNDS.

Established; Pound-keeper.—The selectmen of every town shall erect and maintain a sufficient pound or pounds, for the impounding therein of all creatures liable by law to be impounded, and they shall forfeit two dollars for every month, in which their town shall be without a sufficient pound. S. 1892.

When the selectmen shall establish a new pound, they shall appoint a pound-keeper for it, to hold office until the next annual town meeting. S. 1893.

The duty of selectmen is fully discharged by purchasing or hiring suitable inclosures, already erected, to be used exclusively as pounds. Animals restrained by authority of town by-laws may be impounded.—*Whitlock v. West*, 26 Conn. 405.

Animals in; Notice.—If any creatures be impounded whose owner is not known, the impounder shall, within three days, inform a constable of the town thereof, who shall post a description of them with their natural and artificial marks, and of the place where they were taken, upon the signpost in the town where they are impounded.

and publish a notice thereof in a newspaper printed in the county in which said town is, or in some other newspaper circulated in such town. S. 1895.

Replevy; Disposal of Animals.— Sheep, swine, goats, or geese may be replevied or redeemed by their owner within eight days from the time when they may have been advertised or notice given to the owner as provided in sections 1894 and 1895; and other creatures within twenty days. But if they are not so replevied or redeemed, any constable of the town having previously notified the owner, if known, of the time and place of sale, may sell such creatures at public auction to the highest bidder, and after satisfying the damage, poundage, and the reasonable expenses of supporting, advertising, and selling them, shall pay over to the owner the residue of the avails. But no creatures taken damage feasant, whose owner is unknown, shall be sold, until the fence of the inclosure in which they were taken shall have been found sufficient by two selectmen. S. 1896.

A writ of replevin will not lie against an impounder where a pound-keeper unlawfully detains animals after the tender of the poundage fees.—*Hall v. Hall*, 24 Conn. 358.

PUBLIC SCHOOLS.

See "Schools."

REGISTRARS OF BIRTHS, ETC.

See "Town Clerk."

REGISTRARS OF VOTERS.

Election and Term.— With the exception of certain towns mentioned in the statute, which choose such officers biennially for a term of two years, every town in the state is required at its annual town meeting, to elect registrars of voters, to hold office for one year from the first Monday of the succeeding January. The registrars shall reside in the towns for which they are elected. In towns divided into voting-districts, with certain exceptions named in the statute, two registrars are elected for each district, and in each of the excepted towns and in every town not divided into voting-districts, two registrars are elected for the town at large. No person may vote for more than one registrar for each voting-district or for the town at large; and the person having the highest number of votes, and the one who has the next highest number, for registrar, and does not belong to the same political party as the first, shall be declared elected registrar of voters for the town or district as the case may be. S. 1803.

Oath of Office.— Each registrar, deputy registrar, and assistant, before entering on the duties of his office, shall be sworn and a certificate thereof shall be filed and recorded in the office of the town clerk. S. 1600.

All election officers shall be duly sworn to the faithful performance of their duties, and the several moderators and registrars may administer such oaths. S. 1636.

Vacancy, How Filled.—In case a vacancy shall exist in the office of registrar in consequence of a refusal or failure to accept the office, or a failure to have appointed a deputy registrar, the selectmen and town clerk shall fill such vacancy by the appointment of some suitable person, who shall not belong to the same political party as the other registrar of such town. S. 1598.

Deputy Registrars, Appointment; Duties.—Each registrar of voters immediately after his election shall appoint a deputy registrar, to hold office during his pleasure, and may at any time fill any vacancy in said office; and he shall file with the town clerk a certificate of every such appointment, and the town clerk shall record the certificate with the records of town meetings.

Every deputy registrar shall assist his principal when required, discharge his duties in his absence or inability to act, and, in case of the death, removal, or resignation of such principal, shall become registrar, and appoint a deputy, and shall file with the town clerk a certificate of such appointment, which shall be recorded with the records of town meetings. SS. 1596, 1597.

Assistants, Appointment; Powers.—Each registrar in any and all towns divided into voting-districts may, from time to time, appoint and employ one assistant for each voting-district therein, who shall assist the registrars in the performance of their duties, and shall appoint such assistants for the performance of necessary duties required by this and the succeeding chapter on election day and the six days preceding. S. 1599.

In the absence of either registrar, his assistants may act. *Ibid.*, 1658.

Electors, Who May Be.—Every person who will have resided in this state one year and in the town six months next preceding an electors' meeting, and who has been admitted or previously registered as an elector in such town, shall, unless he has forfeited the privileges of an elector by a conviction of crime, be entitled to be registered, and after such registration to vote therein. But no person shall be deemed to have lost his residence in any town by reason of his absence therefrom in the service of this state or of the United States; *provided*, that this section shall not be construed to exclude from registration any person on the ground that he cannot read, who was duly admitted an elector of this state before October, 1855. S. 1601.

Lists, When and How Made.—The registrars of every town shall at least twenty days before the electors' meetings to be held on the Tuesday after the first Monday of November, 1902, and biennially thereafter, complete a correct list of all electors in their town, or the voting-

districts therein, who shall be entitled to vote in the town or voting-districts at such meetings, and shall place on such list under the title "to be made" the names of those persons by whom, or in whose behalf, the claim is made to either registrar that they will be entitled to be made electors in such town on or before the day of such meeting. The name of no person shall be registered except in the town or district wherein he resides. In towns having less than five thousand inhabitants, the claim for registration may be made either orally or in writing. In towns having more than five thousand inhabitants no person shall be registered unless he or some elector residing in such town shall make in his behalf written application for such registration. Either of the registrars may take copies of the application, and they shall preserve the original for use before the board of selectmen and town clerk when sitting for the admission of electors. S. 1602.

Lists for Electors' Meeting.—The registrars are required to hold a session for the purpose of perfecting such list on the fourth Monday preceding the day of an electors' meeting at some suitable place in their district or town, of which due notice shall be given. They are required to enter the names on the list alphabetically, and when the list is completed it is certified by them and deposited in the town clerk's office at least twenty days before such electors' meeting for public inspection; and a certified copy of the list for each district, where there are voting-districts, is posted by them at their place of meeting; and in towns where there are no voting-districts, a copy of the list is posted in such places as have been designated in a town meeting.

They give notice in the lists of the times and places at which they will hold one or more sessions within the next twelve days for the revision and correction of such list, either by publication in the newspaper in the town or by posting the same on the signpost, at least five days before the first of said sessions, the number of which is fixed by the selectmen of the town. S. 1604.

Lists in Smaller Towns.—Registrars of voters in each town of less than ten thousand inhabitants are required to hold biennial meetings at some place within their town or voting-district on Thursday of the third week before the annual town meeting, of which notice is to be given in the manner provided in section 1604, at which meeting they shall place on a list under the title "to be made" the names of those persons by whom, or in whose behalf, a claim is made to either registrar in the manner provided in section 1602, that they will be entitled to be made electors in such town before the day of such annual meeting. Such lists shall be prepared in the manner provided in sections 1602 and 1604; and in towns having more than five thousand inhabitants no person shall be registered on the list "to be made" unless a written application is made in the manner provided in section 1602. A copy of such list shall be put upon the public signposts in each town and

another copy shall be filed by the registrars with the town clerk of the town. The registrars shall also add to the list of electors the names of those persons who have formerly been admitted or registered as electors in their respective towns, and who have resided in this state the one year and in the town the six months next preceding such annual town meeting. S. 1605.

Lists in Other Towns.—Special regulations are prescribed in the statutes for the registration of electors in the towns of Ansonia, Bridgeport, and Hartford. SS. 1606, 1614.

Applicants, Record of.—The registrars of voters shall keep in permanent form a record of all persons who shall apply at any session of the selectmen and town clerk for admission as voters, showing the name, residence, age, place of birth, and occupation of the applicant, and such record shall be filed in the office of the town clerk. S. 1608.

Convicts' Names Erased.—The selectmen and registrars of towns in which male convicts, whose privileges as electors have been forfeited by their conviction, resided when so convicted, shall compare a list of their names as furnished by the clerks of courts of criminal jurisdiction, with the lists of voters then upon their registry lists, and after due notice to the persons named, shall erase such names from the registry lists of their towns or voting-districts. S. 1609.

Correction of Lists.—At the sessions for the correction of the list any elector of the town may apply to the registrars to add any name to the list or to erase any name thereon; and if at least twenty-four hours before the time of such meeting he has filed with each registrar a written claim for such addition or erasure, stating the reasons therefor, signed by himself, they shall take any testimony under oath that may be offered regarding such claim; but the name of no person shall be erased from the list without twenty-four hours' previous notice to him of the claim for such erasure; and the name of no person whose right is contested shall be entered or retained on the corrected list, without the consent of both registrars. S. 1610.

Appeals.—If any registrar shall refuse to enter on the list the name of any person claiming to be entitled to registration thereon, or to allow a name entered on the first list to remain on such list, any elector of the town or the person whose right is questioned, may appeal from the decision of such registrar (first giving notice to him) to the selectmen and town clerk of the town, who upon notice to the registrars and a hearing, may declare that the person whose qualifications are in dispute is entitled to registration, in which case he shall be registered, otherwise not; but the selectmen and town clerk shall not hear any application not passed upon by the registrars nor any appeal of which notice has not been given; nor shall they hear or act upon any such appeal until after a full compliance with all the requirements and

conditions thereof, and of section 1610; and none of said conditions shall be waived by the registrars or by any other person. S. 1611.

Corrected List in Town Clerk's Office.—The said registrars shall, on or before the Wednesday preceding said electors' meeting, deposit in the town clerk's office the corrected list, arranged as provided by this chapter, and certified by them to be correct, and shall retain a sufficient number of copies to be used by them at said meeting, for the purpose of checking the names of those who vote. They shall place on said corrected list, in the order provided in section 1604, those electors who have been admitted by the board for the admission of electors; and, under the title "to be made," those only on the first list whose qualifications of age or residence, either for admission or naturalization, appear not to have matured at the last session of said board. S. 1612.

Clerical Errors.—If it appears at any electors' meeting in any town that the name of an elector who was formerly admitted or registered as an elector in the town and who has resided for the period required by law in the town, has been omitted from the corrected list by a clerical error, such name may be added to the list; *provided* that the registrars shall not restore any name which has been passed upon by them at any meeting previously held for the correction of the list; and *provided* that no names shall be so added to the list on election day without the consent of both registrars; and *provided further* that no name shall be so added to the corrected list, unless his name, or some name intended for his name, shall have been on the corrected list for the year previous or on one of the preliminary lists for the current year. S. 1613.

Women, Separate List of.—The registrars of every town shall enter upon a separate list under the title, "women's list to be made," the names of those women by whom or in whose behalf the claim is made to either registrar that they will be entitled to vote for school officers and on questions relating to education or to schools, and all applications "to be made" in favor of women, shall be at the same times and in the same form and set forth the same information as applications for men to be made electors, and such claims and applications shall be received by said registrars and heard and determined by the town clerk and selectmen at the same time that claims and applications by men to be made electors are received, heard, and determined. S. 1616.

Sessions; Hours; Census.—The number of sessions of the registrars of voters for perfecting lists is fixed by the selectmen of each town. S. 1604.

All public meetings of registrars shall be held between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, except as provided in sections 1620 and 1720.

For the purposes of all statutes relating to the registration and admission of electors, the population of each town shall be determined by the last completed census of the United States. SS. 1619, 1617.

Lists in Cities to be Printed.— The registrars in every town having a city within its limits shall circulate printed copies of such lists in their respective voting-districts. S. 1607.

Moderators Appointed.— The registrars of voters in the several towns, and in towns where there are different registrars for different voting-districts, the registrars of voters in such districts, shall appoint the moderators of the meetings of electors in their respective towns or districts. In case the registrars shall fail to agree in the choice of a moderator, the choice shall be determined between them by lot, and in like manner they shall appoint the moderators to have charge of any vote by ballot in town meetings for the election of officers, and of any vote by ballot in any city meeting or ward meeting for election of officers. S. 1642.

Officers of Election Appointed.— One or more booth and box-tenders, challengers and counters, are appointed by the registrars for every election and electors' meeting. Two booth-tenders, each of a different political party, required for each voting-booth, one box-tender for each ballot-box, from one to five persons to act as counters, and one or more challengers are appointed by the registrars. SS. 1640, 1643, 1645, 1650, 1656.

Presence at Voting.— Each registrar shall be present during the taking of any vote at any electors' meeting, or annual town meeting, or city, or borough election in his town or district. The assistants in their respective districts shall, when requested by either registrar, be present at the taking of any such vote, and discharge the duties of registrars. The several registrars shall appoint some proper person to check the list in each district, who shall check the name of each voter thereon, when he offers his vote, and no box-tender shall suffer any vote to be deposited in the box until the name is so checked. S. 1654.

The registry of an elector and the exercise of the right to vote tend to prove his domicile. The original registry lists are competent evidence to prove the fact of voting.— *New Milford v. Sherman*, 21 Conn. 101, overruled; *Enfield v. Ellington*, 67 Conn. 459.

Removal of Election Officials.— If at any time during the performance of his duties any counter, booth-tender, box-tender, or checker, shall from any cause, be found incompetent, the registrars may remove him and appoint a competent person in his stead. S. 1664.

RELIEF BOARDS.

See "Assessors of Taxes."

SCHOOLS.

The public school system of Connecticut as applied to towns contemplates two methods of administration. Under the first method a board of school visitors is given charge of all the schools of the town, and in conjunction with the board of selectmen annually submits estimates to the annual town meeting of the financial requirements of the schools. This joint board apportions the funds appropriated by the town among the several districts.

The other method of administration applies in cases where towns abolish all the school districts and parts of school districts within their limits, and assume control of the public schools, in which case the town constitutes one school district. Under the one-district plan a school committee is chosen, composed of from three to twelve residents of the town, as may be determined by the selectmen. This committee has all the powers of high school and district committees and boards of school visitors. They also have the management of all the school property and of the entire financial interests of the schools. They are responsible only to the town for the proper discharge of the duties imposed upon them.

Women as School Officers.— No person shall be ineligible to serve as a member of a board of education, board of school visitors, town school committee, or district committee, or disqualified from holding such office by reason of sex. S. 2115.

Compulsory Attendance.— All parents and guardians of children between the ages of seven and sixteen years are obliged by law to cause them to be instructed in reading, writing, spelling, English grammar, geography, arithmetic, and United States history, and for that purpose to send them to a public day school regularly during the hours and terms the public school in the district in which the child resides is in session, unless the parent or person having control of the child can show that the child is elsewhere receiving regularly thorough instruction during such hours and terms in the studies taught in the public schools. Children over fourteen years of age are not subject to the foregoing requirements while lawfully employed at labor at home or elsewhere. S. 2116.

Transportation of School Children.— Every town in which a school has been discontinued shall furnish, whenever necessary, by transportation, or otherwise, school accommodations, so that every child over seven and under sixteen years of age can attend school as required in section 2116. Acts of 1903, C. 210.

The distinction between domicile and actual residence is excluded, and the words "those having the care of children" are used as exactly equivalent to parents and guardians. The statute should have a liberal construction.— *Yale v. West Middle School District*, 59 Conn. 489.

Private Schools.—Private schools are required to keep a register of attendance of children in the form and manner prescribed by the state board of education, and to make reports and returns concerning the school to that board, as required from the school visitors concerning public schools; otherwise the attendance of children at such schools will not be regarded as compliance with the law. S. 2118.

Truancy.—Truancy is punishable by the arrest and confinement of the truant in some institution of instruction or correction of the town, or, if not under ten years of age, with the approval of the selectmen, in the Connecticut School for Boys. SS. 2123–2128.

School Year; Studies; Age of Admission.—Public schools shall be maintained for at least thirty-six weeks in each year in every town and school district. No town shall receive any money from the state treasury for any district unless the school therein has been kept during the time herein required; but no school need be maintained in any district in which the average attendance at the school in said district during the preceding year, ending the fourteenth day of July, was less than eight. In said schools shall be taught, by teachers found duly qualified, reading, spelling, writing, English grammar, geography, arithmetic, and United States history, and such other studies, including elementary science and training in manual arts, as may be prescribed by the board of school visitors, or town school committee. The public schools of every town and district shall be open to children over five years of age without discrimination on account of race or color, but school visitors, town school committees, and boards of education, may, by vote at a meeting duly called, admit to any school children over four years of age. S. 2130.

It is not necessary that a child should be domiciled in the district, but it is enough if it resides in the district in the ordinary sense of the term.—*Yale v. West Middle School District*, 59 Conn. 489.

Text-books and Supplies.—Any town at its annual meeting may direct the school visitors, town school committee, or board of education, to purchase at the expense of said town, the text-books and other school supplies used in the public schools of said town, and said text-books and supplies shall be loaned to the pupils of said public schools free of charge, subject to such rules and regulations as the school visitors, town school committee, or board of education may prescribe. S. 2135.

An acting school visitor may purchase text-books for children whose parents, in his opinion, are unable to purchase them, and certify the cost to the selectmen or school committee, who shall draw on the town treasurer for payment of the bill. S. 2136.

School Fund, Treasurer.—Every town holding any permanent funds received from any school society or district shall annually elect, by ballot, a school fund treasurer, who shall have charge of such funds,

keep a separate account of the same and give bonds, with surety to the satisfaction of the selectmen, for the faithful discharge of the duties of his office. S. 2137.

Evening Schools Established.—Every town and school district having ten thousand or more inhabitants shall establish and maintain evening schools for the instruction of persons over fourteen years of age, in such branches as the proper school authorities of the town or district shall prescribe; and on petition of at least twenty persons over fourteen years of age for instruction in any one study usually taught in a high school, which persons in the opinion of the board of school visitors, town school committee, or board of education are competent to pursue high school studies, said town or district shall provide for such instruction; but this section shall not apply to a district located in a town which maintains such schools. S. 2145.

Any town of less than ten thousand inhabitants may, at its annual town meeting, or at a meeting warned for that purpose, vote to establish evening schools under the provisions of sections 2145, 2146, and 2148. S. 2149.

Management.—Boards of school visitors, town school committees, or boards of education, as the case may be, shall provide rooms, examine, employ, and pay, the teachers, and shall have all the powers and duties in relation to evening schools that are by law conferred on them in connection with day schools. S. 2146.

Towns Relieved from.—If any board of school visitors, board of education, or town school committee, shall deem it inexpedient or impracticable to establish a school under the provisions of this chapter and shall, on or before the fifteenth of October in any year, apply in writing to the state board of education to be relieved from the provisions of this chapter, and if said board shall, upon investigation, find the application to be reasonable, and shall so state in writing, the town or district so applying by its board of visitors, board of education, or town school committee, shall not be subject to the provisions of section 2145 until the beginning of the school year following the date of the application. S. 2150.

School Societies.—School societies heretofore organized under the Act of 1855, entitled "An Act in addition to and in alteration of an Act concerning education," which are not co-extensive with the towns in which they are situated, shall be and remain school districts of said town, with all the powers and duties of school districts; except that each shall annually choose, instead of a district committee, a board of education consisting of six or nine persons who shall be chosen by ballot, one-third of their number each year, to serve for three years, and until others are elected in their places. Said board shall have all the powers and be subject to all the duties of district committees, and

shall also have the general superintendence of the public schools in the district and the management of its property. S. 2154.

Records.—The records of school societies shall be deposited and forever kept with the records of the towns in which such societies were situated, and where situated in the limits of two or more towns, in the records of that town in which the greater part of its territory lay. S. 2152.

After the lapse of fifty years, it is too late to call in question a construction of a vote adopted by a school district and acted upon by the parties.—*Scoville v. Mattoon*, 55 Conn. 144.

Property.—The distribution of property derived from school societies shall be made by the selectmen of the towns holding the same, and if they cannot agree, then upon application of the selectmen of either town, and notice to the other, by a committee of three disinterested persons appointed by the superior court of the county in which either town is situated. S. 2153.

A trust fund, the income to be paid to a school committee for the benefit of the families of a school society, *held* to be continued, although the school society had been abolished.—*Birchard v. Scott*, 39 Conn. 63.

Alcohol and Narcotics, Effects of Taught.—Hygiene including the effects of alcohol and narcotics on health and character shall be taught as a regular branch of study to pupils above the third grade in public schools; and in grades above the fifth, text-books treating of the effects of alcohol and narcotics on the human system shall be used. This section applies to classes in ungraded schools, corresponding to the grades designated herein, but shall not include high schools. S. 2162.

Whenever the comptroller shall be satisfied that any town or district has failed to comply with the requirements of section 2162, he may withhold from such town or district the whole or any part of the school dividend. S. 2163.

SCHOOL DISTRICTS.

Formation and Alteration.—Each town shall have power to form, unite, alter, and dissolve school districts and parts of school districts within its limits; and two or more towns may form school districts of adjoining portions of their respective towns.

Division of Districts.—Whenever a school district is formed from parts of two or more towns, either of said towns may divide such district by uniting the portions lying in said town with any adjoining district therein. SS. 2175, 2176.

School districts are but the component parts of school societies, and not independent corporations, for all purposes connected with common school education.—*Bartlett v. Kinsley*, 15 Conn. 335.

Where the court, on appeal by a school district, set aside the action of the town but made no further decree, it was held not to be such a fixing of the lines of the district as precluded the town from making any alteration of the

same at the same place.—*Sixteenth School District v. Eighteenth School District*, 54 Conn. 50.

The lines of a district, formed by annexation, may be shown otherwise than by record evidence.—*State ex rel., etc. v. Bradley*, 54 Conn. 74.

The court is not limited to affirming or reversing the action of the town, but can allow the same in whole or in part at its discretion.—*Gravel Hill School District v. Old Farm School District*, 55 Conn. 244.

Corporations; Powers.—Every school district shall be a body corporate, and shall have power to sue and be sued, to purchase, receive, hold, and convey real and personal property for school purposes; to build, purchase, hire, and repair schoolhouses, and supply them with fuel, furniture, and other appendages and accommodations; to establish schools of different grades; to purchase globes, maps, blackboards, and other school apparatus; to establish and maintain a school library; to employ teachers, except for such time as the town may direct the school visitors to employ the teachers, and shall pay the wages of such teachers as are employed by the district committee in conformity to law; to lay taxes and borrow money for all the foregoing purposes; and to make all lawful agreements and regulations for establishing and conducting schools, not inconsistent with the regulations of the town having jurisdiction of the schools in such district. S. 2177.

A district schoolhouse is not an outhouse within the meaning of the Act of 1830, concerning crimes and punishments.—*State v. Bailey*, 10 Conn. 144.

The private property of the inhabitants of a school district may be taken to satisfy a judgment against it.—*McLoud v. Selby*, 10 Conn. 390.

In a vote of a school district laying a tax, it is not essential that the particular object for which it was laid should be specified.—*West School District v. Merrills*, 12 Conn. 437.

In a suit by a school district a name may be assumed by which the district is generally known. The records of the district were proper and legitimate evidence of its votes.—*South School District v. Blakeslee*, 13 Conn. 227.

The votes and proceedings of school districts within their jurisdiction will be liberally construed.—*Bartlett v. Kingsley*, 15 Conn. 327; *Sanford v. Dick*, *Ibid.* 447.

The courts will not interfere to control the amount of funds voted for schoolhouses by the inhabitants of a school district, excepting in cases where the power is manifestly abused. The exercise of such power illustrated.—*Sheldon v. The Centre School District*, 25 Conn. 224.

An injunction will be granted to prevent the use of the schoolhouse for religious meetings and Sunday schools upon the application of any tax-payer, although the injury to him may be very slight, as he has no other remedy.—*Scotfield v. Eighth School District*, 27 Conn. 499.

School districts have power to provide schoolhouses or rooms, and to employ and dismiss teachers, primarily; if the district neglects or refuses to act, the committee are authorized to provide rooms and employ teachers at the expense of the district. If the district acts, its action is conclusive and the committee must conform thereto.—*Gilman v. Bassett*, 33 Conn. 298.

A debt owed by a school district may be taken by foreign attachment. A school teacher is not a public officer nor an officer in the ordinary sense of the term. He is simply in the employment of the district.—*Seymour v. School District*, 53 Conn. 502.

There is no authority conferred on a school district to raise money for other purposes than those specified in the statute.—*Hotchkiss v. Plunkett*, 60 Conn. 230.

Consolidation of Districts.—A town may vote to consolidate the school districts within its limits at an annual town meeting upon due

notice thereof given in the warning. A vote so to consolidate takes effect on the first Monday of July next succeeding; and the town may at any annual meeting, not previous to the fifth annual meeting thereafter, vote to re-establish the several districts as they were previous to their consolidation. SS. 2212, 2213, 2214.

All business relating to public schools in such towns shall be transacted at town meetings. S. 2217.

When a town has lawfully assumed the control and taken the property of its school districts, it may appoint a committee with full power to carry out its orders in relation to the property.—*State v. Foote*, 71 Conn. 737.

When a town assumes control of the school property of the districts, it takes it by direction of the state, and holds it for the same purposes for which it was held by the districts. The transfer of the control of the property and the management of the public schools is but a transfer from one public agency to another.—*Young v. Bethany*, 73 Conn. 171.

The vote of a town at its annual town meeting abolishing all its school districts, upon notice given in the warning of the town meeting, held to have been valid without special notice to each school district.—*Young v. Bethany*, 73 Conn. 166.

Committee, Town, Number, and Election.—The selectmen of a town voting to consolidate shall determine not later than the first Monday of May, the number of which the town school committee shall consist. Such committee shall consist of either three, six, nine, or twelve residents of said town. Every such town shall, at a special meeting of said town called for the purpose by the selectmen, to be held on the first Monday of June following, elect by ballot a town school committee of the number determined upon by said selectmen. In all cases the number of the committee to be elected shall be stated in the warning of said meeting. Such election shall be conducted in the same manner as the annual elections of towns. S. 2215.

Minority Representation on Committee; Terms of Office.—If the number of the committee to be elected shall be six or twelve no person shall vote for more than half that number; if the number be nine, no person shall vote for more than five, and the six, nine, or twelve persons, as the case may be, receiving the highest number of votes, shall be the town school committee of said town for the respective terms as hereinafter provided, commencing on the first Monday of July next following. The members of such committee so elected shall divide themselves into three equal classes, holding office respectively until the second, third, and fourth subsequent annual town elections of said town, at which elections and at every annual election, subsequent to the last thereof, two, three, or four members, as the case may be, shall be elected by ballot for a term of three years, in the manner prescribed in section 2133. S. 2216.

Powers.—The town school committee has the powers and duties of high school committees, district committees, and boards of school visitors. They are held responsible for the maintenance of good public

schools of the different grades in the various parts of the town, for not less than the length of time that would be required if no consolidation had been made. They manage the school property; examine, employ, and dismiss teachers; lodge all bonds and other securities with the town treasurer unless otherwise provided by law; pay the town treasurer all moneys which they receive for the support of schools; determine the number and qualifications of scholars; designate the schools to be attended by the children within their jurisdiction; fill vacancies in their own number until the next annual town meeting; annually, during the first two weeks of September ascertain the expenses of maintaining the schools under their charge, during the year ending the fourteenth day of the previous July, and report the same, with the amount of moneys received, to the annual meeting; and at the same time make a full report of their doings and the condition of the schools under their superintendence, and of all important matters concerning the same; and perform all other lawful acts which may be required of them by the town, or which may be necessary to carry into effect the provisions of this title. S. 2218.

The statute defining the duties and powers of a committee upheld and its provisions construed.—*Bissell v. Davison*, 65 Conn. 183.

Enumeration in Consolidated Districts.—The town school committee is required to appoint one or more persons in October of each year to take a census of the children residing in the town, over four and under sixteen years of age, on the first Monday of said month. The committee examine and correct the returns made to it by the person or persons so appointed, and lodge them, as corrected, with the town treasurer, and also transmit to the comptroller, on or before the fifth of December annually, a certificate in the terms and according to the form prescribed in section 2254. S. 2255.

Payments by the State.—The comptroller shall annually, as soon after the twenty-eighth of February as may be, draw orders for the support of the common schools at the rate of two dollars and twenty-five cents for each child between the ages of four and sixteen years on the enumeration last made and perfected, which orders shall be payable from the civil list funds of the state, and be divided and distributed among the several towns in proportion to the number of persons in each between the ages of four and sixteen years, as ascertained from said returns; and he shall transmit the amount distributed to each town to its treasurer, on the application of its school visitors, or its town school committee; but no such money shall be transmitted to any town until the comptroller shall have received from its school visitors or committee a certificate, signed by them or their chairman and secretary, and substantially in the form given in the statute. S. 2257.

Report to Comptroller.—The board of school visitors or the town school committee, as the case may be, shall make returns, signed by the

chairman and secretary, of the number of persons over four and under sixteen years of age in their respective towns, to the comptroller, and shall in said returns specify how many of those thus returned attended some school, public or private, within the previous calendar year, and how many did not attend any school within that year; how many of those who attended no school were under five years of age, how many were over five and under seven, how many were over seven and under fourteen, and how many were over fourteen and under sixteen years of age, and the chairman and secretary shall draw orders on him for the public money due the town as prescribed in chapter 141. No town shall receive any money for schools from the state treasury unless the returns herein required are made. S. 2167.

Neglect to Open Schools.—In cases where a district neglects or fails to open a school during the usual portion of the year, the school visitors may employ teachers and keep open a public school in the schoolhouse of such district for the usual period; and the town shall pay the whole expense of such a school on the order the selectmen upon their receiving a certificate of the amount thereof from the school visitors. S. 2206.

Visitors, Election.—School visitors shall be chosen by ballot. If the number to be chosen be two, four, six, or eight, no person shall vote for more than half of such number. If the number to be chosen be three, no person shall vote for more than two; if five, not more than three; if seven, not more than four; if nine, not more than five. That number of persons sufficient to fill the board, who have the highest number of votes, shall be elected. In case of a tie that person whose name stands first or highest on the greatest number of ballots shall be elected. S. 2133.

Classification.—There shall be in every town, unless otherwise provided, a board of school visitors, composed of three, six, or nine members, as such town may determine, divided into three equal classes; the first class shall hold office until the next annual town meeting, the second class until the second annual town meeting, and the third class until the third annual town meeting following, and until others are elected in their places, *provided*, that when said board is composed of only three members, they shall not be divided into classes and shall be elected for three years. Should a vacancy occur, the remaining members of the board may fill it till the next annual town meeting when vacancies shall be filled in the manner prescribed in section 2133, and the ballots shall distinctly specify the vacancy to be filled. S. 2132.

Duties.—The board of school visitors or town school committee shall annually choose from their number a chairman and a secretary. They shall prescribe rules for the management, studies, classification, and discipline of the public schools, and, subject to the control of the state.

board of education, the text-books to be used; shall make proper rules for the arrangement, use, and safe-keeping, within their respective jurisdictions, of the school libraries provided in part of the state, and approve the books selected therefor; they shall approve plans for school-houses and superintend any high or graded school, in the manner prescribed in this title. S. 2159.

A certificate of general competency to teach, signed by the school visitors, which has been used by the teacher in one of the school districts of a town, is sufficient for his use in any other district of the same town.—*Wilson v. East Bridgeport School District*, 36 Conn. 280.

The board of school visitors, the town school committee, or the board of education, shall annually assign the duty of visiting the schools of the town to one or more of their number, who shall be called the acting school visitor, or visitors, and who shall visit such schools at least twice during each term, once within four weeks after the opening, and again during the four weeks preceding the close; at which visit the schoolhouse and outbuildings, school register, and library shall be examined, and the studies, discipline, mode of teaching, and general condition of the school investigated. Half a day shall be spent in each school so visited, unless otherwise directed. They shall, one week at least before the annual town meeting, submit to the board or to the committee, as the case may be, a full written report of their proceedings, and of the condition of the several schools during the year preceding, with plans and suggestions for their improvement. S. 2165.

Meetings of Board or Committee.—The chairman of the board of school visitors or of the town school committee or, in case of his absence or inability to act, the secretary, shall call a meeting of the board at least once every six months, and whenever he deems it necessary or is requested in writing so to do by three of its members. If no meeting is called within fourteen days after such a request has been made, one may be called by any three members, by giving the usual written notice to the others. S. 2164.

Acting Visitor or Superintendent.—Boards of education, town school committees, and boards of school visitors may appoint a person, not one of their own number to be acting school visitor or superintendent of schools, who shall have all the powers, perform all the duties, and receive the pay prescribed by law for acting school visitors. Any town at its annual town meeting, or at a special meeting duly called for that purpose, may fix the compensation of the acting school visitor or superintendent. S. 2166.

Meeting of Joint Board.—The school visitors and selectmen in each town which has not voted to consolidate its school districts shall meet as a joint board on the third Tuesday of June in each year, and prepare a statement showing the estimated cost of each and all the public schools in their town for the next school year, and shall immediately

thereafter notify the committees of the respective school districts of the several amounts so fixed. S. 2265.

Certificates.— After the close of each term of school in any district, the school visitors shall give to the selectmen a certificate stating whether each school has been kept in all respects according to law or not; and shall in connection with the selectmen perform the duties required by the provisions of chapter 141, and make the apportionment required in section 2276. S. 2168.

SELECTMEN.

Election, Term.— Every town, unless by special act exempted therefrom, is required to elect at its annual town meeting not less than three nor more than seven selectmen. S. 1802.

Of the persons elected as selectmen, the one having a plurality of the ballots cast becomes the first selectman, and in the absence of a special appointment is *ex officio* the agent of the town. S. 1812.

The term of office of selectmen, like that of other elective town officers, with exception of certain towns, named in the statutes, is one year from the date of their election. SS. 1806, 1807.

A person first named on a plurality of ballots as actually cast, and not the first named on a set of ballots or a party ticket, is first selectman.— *Mallett v. Plumb*, 60 Conn. 352; *Brown v. Blake*, 46 Conn. 549.

In electing selectmen, it is immaterial in what order the names of the candidates appear on the ballots. The member of the board chosen whose name stands first upon a plurality of the ballots actually cast and counted for them, or any of them, is "first selectman."— *Buck v. Barnes*, 75 Conn. 460.

Bonds.— The first selectman of every town having a population of fifteen thousand or over, and wherein the selectmen are the financial agents of the town, before entering upon the duties of his office, shall furnish to the town a good and sufficient bond, satisfactory to the treasurer of the town, for not less than three thousand dollars, conditioned for the faithful performance of his duties. Said bond shall be filed with the treasurer of the town. All other members of any board of selectmen in such town, before entering upon the duties of their office, shall each execute and file with the town treasurer, as aforesaid, a good and sufficient bond satisfactory to said treasurer, for not less than twenty-five hundred dollars each, conditioned for the faithful performance of their duties. Nothing herein shall be construed to prevent any town, by vote in town meeting, from raising the amount of said bonds. Any other town may, at a legal meeting, enact a by-law requiring its selectmen to furnish such bond, in such sum, not exceeding three thousand dollars, as may be determined upon at such meeting. S. 1829.

Ineligible to Other Offices.— No selectman may hold the office of town clerk, town treasurer, or collector of the town taxes of the same town

during the same official year, nor can a selectman be chosen a registrar of voters. SS. 1813, 1805.

One may be chosen to the office of collector while selectman, but could not hold the two offices at the same time. A selectman may not appoint himself collector by his own vote.—*Oakey v. Fowler*, 66 Conn. 294.

Oath of Office.—Selectmen before entering upon the duties of their office, shall be duly sworn, and the authority administering the oath shall file a certificate thereof with the town clerk who shall duly record the same. S. 1828.

General Powers and Duties.—The selectmen of each town shall, forthwith, after the election or appointment of any town officers of whom an oath is required by law, cause them to be sworn to a faithful discharge of their respective duties. They shall superintend the concerns of the town, adjust and settle all claims against it, and draw orders on the treasurer for their payment. They shall require of the treasurer a sufficient bond, with surety, conditioned for the faithful discharge of the duties of his office; and the selectmen who shall neglect or refuse to require such bond, shall be jointly and severally liable to the town for all moneys not accounted for by the treasurer. They shall make a sworn report to the treasurer of the amount, number, and date of each town order drawn by them, at the end of every month; and they shall keep a true account of all expenditures, and exhibit it duly verified by their oath at the annual town meeting. S. 1830.

In laying out and in removing encroachments from highways, the selectmen act as public officers and not as agents of the town.—*Tomlinson v. Leavenworth*, 2 Conn. 294; *Torrington v. Nash*, 17 Conn. 199; *Mallory v. Huntington*, 64 Conn. 100.

Selectmen of a town, by virtue of their general powers as such, and without the delegation of any special authority for the purpose, have a right to prosecute and defend suits to which their town is a party.—*Union v. Crawford*, 19 Conn. 331.

Towns cannot act at all except through the preliminary agency of the selectmen. They alone can warn and organize town meetings and thus enable towns to act directly on any subject. They are legally constituted agents of the towns in such matters as the repair of roads and bridges and in providing for the poor, etc., and the towns must stand responsible as principals for their neglect.—*State v. New London*, 22 Conn. 169.

If the agent is acting in public business and enters into a contract for the benefit of the public, he is presumed to act in his official capacity.—*Ogden v. Raymond*, 22 Conn. 385, cites *Hodgson v. Deater*, 1 Cranch, 345.

The selectmen have full power to settle an account presented by another town against the town which they represent, for supplies furnished to a pauper belonging to their town.—*Sharon v. Salisbury*, 29 Conn. 113.

The payment by the selectmen of an account for supplies to a pauper furnished by another town is an implied admission that the pauper is a settled inhabitant of the town and of its continued liability for his support.—*Sharon v. Salisbury*, 29 Conn. 113.

The selectmen by virtue of their office have power to bind the town by a contract in the line of their duty in the repair of a road.—*Burlington v. New Haven & Northampton*, 26 Conn. 56.

Selectmen stand on the same ground with other agents in proving the responsibility of their towns by their acts.—*Tolland v. Willington*, 26 Conn. 579.

Selectmen have power, without special authority from the town, to submit to arbitration a claim against the town for damages.—*Hine v. Stephens*, 33 Conn. 504; *Mallory v. Huntington*, 64 Conn. 88.

In giving a note for payment of a bounty to volunteers, the selectmen exceeded their authority and did not bind the town.—*Ladd v. Franklin*, 37 Conn. 62.

A selectman who expressed a willingness to do what was right in settlement of a claim for injuries caused by a defect in a highway did not waive the notice required by statute. It made no difference that he was first selectman and *ex officio* the agent of the town.—*Hoyle v. Putnam*, 46 Conn. 56.

If the selectmen pay more than the actual damage for injury by dogs, the town can still recover only the amount of actual damages from the owner.—*Wilton v. Weston*, 48 Conn. 326.

An order given by the selectmen upon the town treasurer in satisfaction of a claim authorizes a payment within the meaning of the statute.—*Bethlehem v. Watertown*, 51 Conn. 491; *Wilton v. Weston*, 48 Conn. 326.

One of three selectmen could not bind the town to submit a question of the settlement of a pauper to arbitration, even when another had agreed that this one "should attend to the case," the third not being consulted. The town was not bound by the award.—*Haddam v. Lyme*, 54 Conn. 35.

A town may be enjoined to restrain selectmen from carrying out an unlawful purpose when acting by vote of the town. The selectmen acting under a vote of the town in the removal of a fence as being within the limits of a highway acted as agents of the town.—*Wetherell v. Newington*, 54 Conn. 68.

Under a vote of the town authorizing the selectmen "to employ such assistants for the office of the town agent as in their judgment might be necessary," held that one employed by them to assist in the care of the town paupers was an agent of the town.—*State v. Clerkin*, 58 Conn. 98.

The selectmen may appear before the general assembly and oppose a division of the territory of their town, and may employ counsel and incur other reasonable expenses for the purpose, where the town has not otherwise taken action.—*Farrel v. Derby*, 58 Conn. 234.

The selectmen have no authority to appoint a superintendent of highways nor an agent to act for the town, the law imposing upon them a personal trust to perform the duties in question.—*Pinney v. Brown*, 60 Conn. 169.

In the building and repairing of highways, selectmen act as agents of the town.—*Mallory v. Huntington*, 64 Conn. 100.

Adoption of Children.—The guardian of any child under the age of fourteen years with the consent of the selectmen of the town where such child resides; or the selectmen of any town having in charge any foundling child, may by written agreement give in adoption such child or minor to any person, upon approval of the probate court of the district where the natural parent or guardian or the adopting parent resides. S. 233.

A father cannot divest himself of the custody and control of his minor children by an agreement with the mother. The neglect of his children by a father where they are taken away without his consent does not constitute emancipation of them.—*Johnson v. Terry*, 34 Conn. 259.

Anatomy; Delivery of Body.—Authority is given to the first selectman of any town having in his possession or control the dead body of any person which would have to be buried at public expense, to notify the medical department of Yale University and after twenty-four hours have elapsed, to deliver such body to said department, if within one year previously such department has notified such official that such bodies would be needed for purposes of medical and surgical study only in a manner consistent with public propriety and in this state only.

No such notice will be given and no body delivered in case of a person dying of Asiatic cholera and certain other infectious or contagious diseases. Other exceptions are also named in the statute. SS. 4428, 4429, 4431.

Medical Colleges, etc., Inspected.— The selectmen of every town may at any time enter and inspect every part of any building therein, used as a college, academy, school, or medical institution, in which instruction is given in medicine, anatomy, or surgery. S. 4433.

Apprentices.— Minors of the age of fourteen years, having no parent or guardian within the state, may indenture themselves as apprentices, with the approbation of the selectmen of the town.

The minor children of paupers and others not employed and living idly and exposed to want, may, with the assent of a justice of the peace, be indentured by the selectmen as apprentices to some proper trade, in case of males till twenty-one, and females till eighteen years of age, unless sooner married, and in that case until their marriage. They may also be indentured in like manner to any society incorporated for the purpose of caring for destitute children and orphans in this state, and the selectmen may contract with such society to defray the expenses of such child to an amount not exceeding one dollar and fifty cents a week. SS. 4685, 4686.

Release.— Selectmen shall inquire into the treatment of apprentices indentured by them; and, if they find that the master has failed to perform his part of the indenture, may cancel the same. S. 4689.

Auctioneers; Blind Persons; Licenses.— The majority of the selectmen of every town may issue licenses to persons who shall expose for sale by auction any goods or articles, with certain exceptions named in the statute, and may revoke the same, if in their judgment it shall be for the public interest so to do; but no license shall be issued unless an application therefor in writing has been made and filed with one of the selectmen at least three days before the issue of such license.

No town shall require any license fee from any blind person, resident of this state, for the privilege of selling within its limits, goods, wares, and merchandise made by him with his own hands. SS. 4649, 4650.

Bastardy.— The consent of the selectmen is necessary to a settlement of a bastardy suit brought on complaint of the mother of the child. In cases brought by the town under section 974, the selectmen may compromise on receipt of a fixed sum, or of security for the payment thereof for the benefit of the town. SS. 972, 975.

A contract upheld between the father and mother of an illegitimate child whereby she agreed not to institute bastardy proceedings to compel him to contribute to the child's support, in consideration of his agreeing to convey to her certain real estate. Such a contract may be enforced by a court of equity against him or, in case of his death, against his estate.— *Van Epps v. Redfield*, 68 Conn. 39.

Bicycle Side-paths.— Side-paths for bicycles shall be of such width as the selectmen shall approve. Every county side-path commissioner shall furnish an exact copy of this section to the selectmen of every town in his county who shall cause the same to be publicly posted in their town. S. 4674.

Bicycles; Motor Vehicles.— The selectmen of a town may in their discretion upon any special occasion grant permits to any person, or persons, to ride bicycles or tricycles at a rate of speed exceeding ten miles an hour upon specified portions of the public ways of the town, and may permit the use of velocipedes or other similar machines by children on any sidewalk in any public way, square, or park in their town. SS. 2061, 2062.

They may also upon any special occasion or whenever in their judgment it may be deemed advisable grant permits to any person or persons or to the public to run motor vehicles during a specified time, or until such permit is revoked, upon specified portions of the public ways, or highways, of such town, at any rate of speed, and may annex such other reasonable conditions to such permits as they may deem proper. S. 2089.

Camping out.— All persons camping on the public highway without the consent of the selectmen may be committed to the workhouse and sentenced to hard labor. S. 1342.

Cemeteries, Neglected, Care of.— In any town where there is a public burial-ground, or cemetery not under the control or management of any cemetery association, which has been neglected and allowed to grow up to weeds, briars, and bushes, or about which the fences have become broken, decayed, or dilapidated, the selectmen of such town upon the application of twenty legal voters who are tax-payers of such town, shall annually cause such burial-ground to be cleared from weeds, bushes, and briars, and cause its fences and walls to be repaired and kept in orderly and decent condition, and its memorial stones to be straightened; but the annual expenditure for said purposes in any one burial-ground or cemetery shall not exceed one hundred dollars. S. 4461.

Children, Homes for.— Upon notice from the managers of any home, to which any child demented, idiotic, or afflicted with any incurable or contagious disease, has been committed, the selectmen of the town from which such child was committed shall have the same removed therefrom immediately; but this section shall not apply to a child who contracts a curable contagious disease in such home. S. 2789.

Coasting on Highways Prohibited.— The selectmen of any town may limit or prohibit coasting in the public streets or highways of their town, and may issue an order stating such prohibition, or the limit to be observed, and cause the same to be printed or plainly written and

posted in at least ten conspicuous places within the limits of such town; *provided*, that selectmen of towns having cities or boroughs within their limits shall not exercise such power within the limits of such cities or boroughs. S. 1919.

Collector of Taxes Appointed.—If any collector shall refuse or fail from any cause to collect and pay a tax within the time limited and shall deliver up his rate-bill, the selectmen or committee of the community may depute some person to collect the sums due on the rate-bill. S. 2385.

Common Fields, Fences.—The party condemned to pay the cost of repairing a fence of a common field may within ten days after payment thereof apply to two disinterested selectmen of the town in which said fence is, who shall appraise the expense of repairing such fence. S. 4095.

A statement of the appraisal of the fence at a gross sum, *held* to be a sufficient account, in the absence of any objection or request for a more detailed statement by the defendant at the time.—*Hollister v. Hollister*, 35 Conn. 241.

Common Lands, Powers Over.—The selectmen of any town, when there is no proprietors' committee of common and undivided lands, shall have the same power in regard to such lands as proprietors' committees have; and their fees shall be paid by the person requesting their services. S. 4064.

Conservators Appointed.—The selectmen of a town in which any person resides who is found incapable of managing his own affairs, may in certain cases make application to the probate court of the district for the appointment of a conservator of such person. S. 237.

A court of probate has no jurisdiction over a person who resides outside of the district, in a case where no personal notice of the proceeding is served upon him.—*Sears v. Terry*, 26 Conn. 273.

An objection to the form of application for appointment of a conservator could only be made in the proceeding before the probate court.—*State v. Hyde*, 29 Conn. 564.

In a proceeding for the appointment of a conservator of a woman, evidence that she had, by reason of debauched habits, become incapable of taking care of herself and of managing her affairs, and that she had lived with a man and had illegitimate children by him was properly admitted.—*Wickwire's Appeal*, 30 Conn. 86.

A probate court retains jurisdiction of the estate of a ward after he has removed from the district.—*Culver's Appeal*, 48 Conn. 165.

An application by the selectmen is necessary to give a probate court jurisdiction. An appointment made on application of a private person, not a relative, is void.—*Hayden v. Smith*, 49 Conn. 83.

The disability of a person over whom a conservator is appointed does not follow him when he removes to another state.—*Gates v. Bingham*, 49 Conn. 275.

The disability of a ward does not commence until the conservator has qualified.—*Baker v. Potter*, 51 Conn. 78.

A man may be of good habits, be a church member and an elector, be capable of doing odd jobs of work and care for himself to a certain extent, and still be incapable of managing his affairs, within the meaning of the statute.—*Cleveland's Appeal*, 72 Conn. 342.

The requirement of the statute that the court of probate shall appoint a conservator does not exclude the exercise of a reasonable discretion on the part of that court or of the superior court of appeal.— *Wentz's Appeal*, 76 Conn. 405.

Constables Appointed.— The selectmen of any town, upon the occasion of any public celebration or gathering or during the period of any unusual excitement therein, may appoint such number of special constables as they may deem necessary to preserve the public peace within the limits of the town.

They may also appoint special constables with power to serve criminal process and arrest for crime, at the request of any agricultural society, cemetery or other association owning or having temporary control of grounds used for the lawful purposes of such society or association in their town.

They may also appoint as special constables, with power to arrest for truancy or other causes and for disturbance of schools and school meetings, the committees of school districts, janitors of school buildings and other persons, on nomination by the school visitors of the town or board of education of an incorporated school district. SS. 1838, 1839, 1840.

Contagious Diseases, Report.— The selectmen in each town shall report to the commissioner on domestic animals, any animals infected with a contagious disease. S. 4377.

Crime, Detection.— The selectmen shall have power to expend a sum not exceeding five hundred dollars during any one year, for the detection and prosecution of crime, the punishment of which may be imprisonment in the state prison, committed within their towns. S. 1841.

Deaf, Dumb, and Blind, Returns.— The selectmen of each town shall return to the governor on or before the first day of November, annually, the number of deaf and dumb and blind persons therein, and the age, sex, and pecuniary circumstances of each. S. 1831.

Dogs, Damage by.— Whenever any resident of this state shall sustain damage by dogs to his sheep, lambs, Angora goats, Angora kids, horses, hogs, poultry, or cattle, he shall give information thereof to one of the selectmen of the town in which such damage was done, and thereupon one of the selectmen with a person to be named by the person so damaged shall estimate the amount of such damage. In case they fail to agree, they shall choose some disinterested third person to assist in estimating said damage.

In case the owners or keepers of such dogs shall not be residents of the town where the damage is done, the selectmen of such town, may institute a suit against the town where such owners or keepers reside, unless such persons or such town, on notice, pay to the treasurer of the town where such damage was done the amount of such damage. S. 4478.

In the absence of fraud or mistake by the selectmen in making an estimate, the town is bound to pay only the amount estimated by them.—*Van Hoosear v. Wilton*, 62 Conn. 106.

The action of selectmen upon notice of the injury by dogs in prosecuting the owner for damages in a given case upheld.—*Jones v. Sherwood*, 37 Conn. 466.

In an action for damages only the actual damage can be recovered, and recovery by the town is restricted to such damage.—*Wilton v. Weston*, 48 Conn. 326.

The statute does not create a contract obligation on the part of the town to pay the damage sustained by a person whose sheep or cattle are injured by dogs.—*Davis v. Seymour*, 59 Conn. 531.

The conditions for recovery from the town set forth.—*Van Hoosear v. Wilton*, 62 Conn. 107, 108.

Notices Posted.—The selectmen of each town shall, annually, at least thirty days before the first of May post a notice in every school district in their respective towns, setting forth all the requirements of this chapter, with the penalties of non-compliance with the same. S. 4480.

Killed or Muzzled.—Every owner, keeper, or harbinger of a dog shall kill said dog or muzzle it, to the acceptance of the selectmen of the town wherein such dog is owned or kept, from the first of May in each year until such time as said selectmen shall order said muzzle removed. S. 4479.

The selectmen shall cause every dog found killing or worrying sheep or lambs to be killed. S. 4483.

It is not necessary to make a case of a dog "doing mischief" that he should be attacking an animate object; a dog lying asleep upon a bed of young plants and seriously injuring them, held to be a case of mischief within the meaning of the statute.—*Simmonds v. Holmes*, 61 Conn. 1.

A dog is "doing mischief" while chasing, frightening, annoying, or worrying a household cat.—*Ward v. Glennon*, 74 Conn. 6.

Upon the death of the owner of a dog, and administration taken out upon his estate, the ownership of the animal passes to, and vests in, the personal representative of the deceased owner, and he becomes liable for damage done by the dog.—*McAdams v. Starr*, 74 Conn. 85.

Unlicensed May be Killed.—Any dog not licensed and collared as provided in this chapter may be lawfully killed by a constable or policeman, who, upon presenting satisfactory proof thereof to either of the selectmen, shall be paid a bounty of one dollar by the town wherein such dog was killed. S. 4474.

Drainage, Obstructions.—The selectmen have authority to cause obstructions upon adjoining lands interfering with the drainage of adjacent low lands to be removed upon the application of the owner of such low lands. They may order the owner of the lands adjacent to remove such obstructions, and if he fails so to do, they may perform the work so ordered, and the expense thereof as certified by them shall be paid by such of the parties in interest and in such time as the selectmen may determine. S. 4513.

Drawbridge Crossed by Street Railway.—Every town operating and maintaining a drawbridge across which any street railway company

operates its cars, shall upon presentation to the comptroller of a certificate to that effect, signed by the selectmen of such town, receive annually from the state the sum of five hundred dollars for each and every such drawbridge. S. 2094.

Gates.— The approaches to all drawbridges over which public highways pass shall be provided by the town or towns or owners of such bridges with lawful gates for the protection of travelers, subject to the approval of the selectmen of the town or towns in which such bridges are located. S. 2093.

Drunkards, Habitual, Confinement.— The selectmen of a town in which he resides, or is domiciled, may make application to the probate court for the district for an order of confinement of any habitual drunkard. S. 2744.

Electors, Admission Board.— The selectmen and town clerk of every town constitute a board for the examination of the qualifications of electors, and the admission to take the elector's oath of those who are found qualified. They hold a meeting for such purpose on Friday of the third week before any electors' meeting, and may adjourn such meeting from time to time until all have been admitted or rejected from the list of electors "to be made."

The list when made up contains the names of electors admitted with their residences and should be completed before twelve o'clock in the evening of the day before the electors' meeting. The registrars are required to give notice of the times and places of their meetings by publication in a newspaper, if any, published in their town, and by posting the same on the signpost of the town at least three days before such meeting, which meeting can be held only upon the days prescribed by law. S. 1620.

The Constitution of the state has made them the sole judges of the qualifications of electors and the superior court has no power by writ of mandamus to control their action.— *Freeman v. Selectmen of New Haven*, 34 Conn. 406.

The selectmen and town clerk acting as a board of registrars are quasi-judicial officers and exempt from liability for their action as long as they act in good faith and within their jurisdiction.— *Perry v. Reynolds*, 53 Conn. 527.

Mode of Admission.— The said board of selectmen and town clerk shall not admit to the privileges of an elector, or to an examination, any person, unless he shall have been registered on the first list under the title "to be made." Every person who shall present himself for examination shall be first sworn touching his right to be made an elector, and he shall, under oath, state how long he has continuously resided in this state and in such town, whether he is an alien, or native born, and when he became twenty-one years of age, and before his admission he shall read at least three lines of the Constitution or of the statutes of this state, other than the title or enacting clause, in such manner as to show that he is not prompted, nor reciting from memory; said

board shall allow each registrar, if demanded, to select any three lines of the Constitution or of the statutes to be read by the applicant. The board may admit any applicant otherwise qualified without reading, who shall have lost his eyesight and who shall prove by any proper record evidence that he has heretofore been admitted an elector of this state. If the applicant be a naturalized citizen, he shall present a copy of the record of his naturalization under the seal of the court issuing the same, and make oath that he is the identical person named therein, which paper, before said board shall pass upon his other qualifications shall be indorsed by the word "approved" or "disapproved," as the case may be, with the date of his application and the signature of the clerk of said board. Upon the request of any elector of such town they shall require the applicant to prove his identity, age, and residence, by the testimony of at least one elector under oath. S. 1622.

Convicts' Names Erased.—The selectmen and registrars of voters of any town, receiving from the clerk of a court having criminal jurisdiction a list of male persons who have been convicted in said court of crimes that would disfranchise such persons, shall compare the said list with the lists of voters, then upon their registry lists and after due notice to the persons named, shall erase their names from the registry lists in their towns or voting-districts. S. 1609.

Exhibitions, Licenses.—The selectmen of any town, may license and regulate any exhibitions therein; but selectmen shall not license any such exhibition within the limits of any city or borough. S. 4651.

Fire-escapes, Duties.—In case there is no inspector of buildings or other officer charged with such duty, the first selectman of every town shall in the month of July of each year, inspect every room of every hotel in his town, and shall ascertain if the provisions of section 2632 are complied with, and report the condition of the rope or other appliance to the board of selectmen. S. 2634.

Fireproof Building, Land for.—When any town shall have authorized the erection of a building for the protection of its records against fire and the selectmen or the committee appointed for the purpose shall fail to agree upon a site for such building, or with the owner as to the price of a site, then the selectmen may bring their petition in the name of the town to the superior court of the county, or any judge thereof, praying that such site may be fixed, and such compensation may be determined. S. 1961.

Fireproof Safe.—Every town not already provided with a fireproof safe, vault, or building for the protection of its records against fire, shall be furnished with such, and the selectmen of the town shall procure the same. SS. 1960, 198.

Fire Marshals, Local.—The first selectman of every town having no local fire marshal or chief of a fire department, shall be known as local

fire marshal, and he shall within two days, not including Sunday, of the occurrence of any fire within his jurisdiction by which property has been destroyed or damaged, investigate the cause, origin, and circumstances of such fire, and especially whether it was the result of carelessness or design, and for that purpose may enter into and upon any premises where the fire occurred or adjacent thereto, and duly examine the same. S. 174.

Fences, Legal, on Stream or Pond.—The statute defines what constitutes a legal and sufficient fence (S. 4067), and requires proprietors of lands to make and maintain such fences, but also declares that another fence which in the judgment of the selectmen shall be equal to the rail fence prescribed shall be a sufficient fence. The use of barbed wire for fences is prohibited, unless employed under certain conditions and restrictions. When the dividing line is a stream or pond, which is not a sufficient fence, and it is impracticable to make the fence in the line, if either party refuses to make a divisional fence on either side, two selectmen of the town shall on application of either party determine where the fence shall be erected, and what part each party shall make and maintain, and deliver their decision in writing to the parties. SS. 4067, 4070, 4074.

Where a private river divides land between adjoining proprietors, no division fence can be made, and the case must be ruled by principles of reason and common justice.—*Bissell v. Scuthworth*, 1 R. 269.

Where a ditch is named as the boundary in a conveyance of land, the grant extends to the center of the ditch.—*Warner v. Southworth*, 6 Conn. 471.

An owner of land erected his front fence on the line of the street and so placed a post at the end of the line that part of it stood on his neighbor's land; *held* that he was not protected by the statute but was a trespasser.—*Hubbell v. Peck*, 15 Conn. 133.

The terms "ordinary fence" and "sufficient fence" distinguished, and the legislation on the subject from the settlement of the state reviewed.—*Hine v. Wooding*, 37 Conn. 123.

Either proprietor of adjoining lands has a right to erect a fence along the whole line for the protection of his own land, if the other proprietor does not erect any fence on the line, and the other has no power to pull down the fence thus erected. The statute commented upon.—*Mosman v. Sandford*, 52 Conn. 23.

Division, Purchase of.—If the adjoining proprietors do not agree, either may call on the selectmen of the town in which the fence is, who may set out to each his proportion of the fence and determine how much shall be paid to the party erecting or owning the same by the other. SS. 4071, 4072.

A parol partition of a divisional fence by adjoining owners is valid.—*Guyer v. Stratton*, 29 Conn. 421.

Where a town had elected but one selectman and he acted by request of both parties, it was *held* that no objection could be taken because of his want of power.—*Kellogg v. Brown*, 32 Conn. 108.

Where a committee, upon a hearing of the parties interested, established bounds along the line of an old wall, which had been removed, and both parties agreed it had been on the true line; and the court had accepted and confirmed their report, it was *held* that one of the parties in a later suit could not claim that the line of the new bounds was not the true line.—*Mosman v. Sandford*, 52 Conn. 23.

Repairs.—If any person neglects to keep his divisional fence in repair, the party aggrieved may call on the selectmen to view it, who, if they find it insufficient, shall immediately notify in writing the person bound to repair it, and mail to the owner of any mortgage, upon land bounded by the fence, a written notice of an order to repair such fence. S. 4073.

The duty of the defendant to keep the fence in repair should be averred in an action for repairs of a division fence.—*Sharpe v. Curtiss*, 15 Conn. 526.

The fence-viewers are sole judges of what is required for a sufficient fence in a given case. Where fence-viewers find the fence to be insufficient, their notice to the persons bound to repair it need not specify the particular defects.—*Fox v. Beebe*, 24 Conn. 278; *Guyer v. Stratton*, 29 Conn. 421.

The fence-viewers need not give the delinquent party notice of the time of the meeting to estimate the value of the repairs. Fence-viewers are not judicial officers.—*Edgarton v. Moore*, 28 Conn. 600.

The fifteen days allowed in which to make repairs run from the time of the service of the notice.—*Guyer v. Stratton*, 29 Conn. 421.

Division, Apportionment.—When there is no fence between adjoining proprietors, or when a particular enclosure shall be divided between two or more proprietors, and either desires to have a division fence erected, two selectmen of the town where such land lies, and if it lies in more than one town, then one from each town, may, after notice to the proprietors, view said dividing line, and, if they deem it reasonable that said fence should be erected at the expense of each of said proprietors, they shall divide and stake out said line, assign to each his portion thereof, and limit the time within which it is to be erected.

If either shall make his portion of said fence and the other neglects to make his portion within such time, the selectmen may cause the fence to be completed, and the expense thereof as certified by them shall be paid by the proprietor so neglecting. S. 4075.

The fence-viewers have no power to fix the dividing line between adjoining owners where it is disputed or uncertain; this duty belongs wholly to the committee of freeholders, provided for by another statute.—*Talcott v. Stillman*, 28 Conn. 194.

New Fence.—Like proceedings may be taken when a particular enclosure has been or shall be divided, and the parties cannot agree respecting the division of the fence belonging to the same, or when adjoining proprietors cannot agree respecting the division of an existing fence, and there is no record of any division of it. The award shall be in writing signed by the selectmen describing such division and limiting the time within which payment shall be made of the sums awarded. S. 4076.

Where plaintiff held under defendant land requiring a divisional fence, and the original fence was built by defendant, but after the division it became the duty of defendant to share the expense of maintaining the fence, it was held that the fence-viewers, on plaintiff's application, had power to divide and apportion the fence anew.—*Wright v. Wright*, 21 Conn. 329.

Fences Around Home Lots.—Where there is a dwelling-house on the lot of one proprietor within one hundred rods of the line which divides

the lot from another, and the owners cannot agree about erecting a divisional fence, the owner of the dwelling-house may notify any two selectmen of the town in which the lot is situated, or, if it is more than one town, one selectman from each town, who, upon notice to the parties and a hearing, may adjudge upon what terms the owner of said lot may erect a better fence than is required by law, and the part of the expense of such fence which the adjoining owner shall pay and shall allow to such adjoining owner the value of his part of the existing divisional fence.

Said selectmen shall make a written certificate of their doings and leave a copy of the same with each proprietor. SS. 4081, 4082.

Fire and Sewer Districts, Meeting to Establish.—Upon the petition of ten legal voters in any town, the selectmen shall call a meeting of voters to act upon such petition to establish a district for any one of the following purposes, viz.: to extinguish fires, sprinkle or light streets, plant and care for shade and ornamental trees, construct and maintain sidewalks, crosswalks, drains, and sewers, or to appoint and employ watchmen or police officers. Such meeting shall be called within fourteen days after receipt of the petition therefor, by posting a written notice of the same in some conspicuous place in said proposed district five days before the date fixed for the meeting, and by advertising said notice in some newspaper published or circulated in said town. SS. 1998, 1999.

Fish Pond, Weirs and Nets.—The selectmen of a town in which any pond or lake is situated or the selectmen of adjoining towns surrounding any lake or pond, by concurrent action, may, where such pond has been stocked with fish not natural to those waters, construct or authorize the construction of weirs or nets, to prevent the escape of such fish or their destruction by being drawn into any flumes or millraces, or otherwise; *provided*, that such weirs or nets shall be so constructed and kept clean as not to interfere with the passage of water when drawn from such pond for manufacturing and other purposes. S. 3108.

Gas and Electrical Commissioners.—In any town which shall obtain a plant as provided in section one thousand nine hundred and seventy-eight, a commission to be known as the board of gas commissioners, board of electrical commissioners, or board of gas and electrical commissioners, consisting of three citizens of such town, shall be appointed by the selectmen. Before entering upon their duties they shall each give a bond to the town for the faithful performance thereof, in a sum and form and with such sureties as the selectmen shall approve. They shall, annually, in September render to the board of selectmen a detailed statement of their doings and of the business and financial matters in their charge, and shall also whenever required by the selectmen make in detail a statement of their doings, business, receipts, dis-

bursements, balances, and of their indebtedness to the town, and pay over all moneys collected by them to the treasurer of the town. S. 1985.

Guideposts.— The selectmen of every town shall erect and maintain, at every place of intersection of highways, a guidepost for the direction of travelers, which shall be a substantial post not less than eight feet high, near the upper end of which shall be placed a sign of metal or wood upon which shall be plainly marked the name of the next town or place, and of such other town or place of note as the selectmen think proper, to which each road leads; the number of miles to the same, and the figure of a hand with the forefinger thereof pointing toward such towns or places, or the figure of an arrow indicating such direction. The selectmen of any town who shall neglect or refuse to erect such signposts or maintain the same according to the provisions of this section shall be fined five dollars for each offense. S. 2045.

A town is liable for the refusal or neglect of its selectmen to erect and maintain guideposts as required by the statute. The necessity or convenience of the place is a question of fact for the jury.— *Anderson v. New Canaan*, 66 Conn. 55; *Bronson v. Washington*, 57 Conn. 346.

HIGHWAYS.

Blocked by Snow.— Whenever any highway shall become blocked with snow to an extent that renders the same impassible for public travel, the selectmen of the town shall cause such highway to be opened for public travel at the expense of the town within a reasonable time thereafter. The provisions of this section shall not apply to any highway within the limits of any city or borough, unless the town has the supervision of the highways in such borough. S. 2030.

A by-law, authorized by a city charter, requiring an abutting owner to remove snow from his sidewalk fronting his lot within six hours after the same had fallen or formed, was *held* not void for uncertainty and did not violate any constitutional right of the land-owner.— *State v. McMahon*, 76 Conn. 97.

Boundaries Defined.— Whenever the boundaries of any highway shall have been lost or become uncertain, the selectmen of any town in which such highway is located, upon the written application of any of the proprietors of land adjoining such highway, may cause to be made a map of such highway, showing the fences and bounds as actually existing, and the bounds as claimed by adjoining proprietors, and shall also cause to be placed on said map such lines as in their judgment coincide with the lines of the highway as originally laid down. Said decision shall specifically define the line of such highway and the bounds thereof, and shall be recorded in the records of the town in which such highway is located, and the lines and bounds so defined and established shall be the bounds of said highway unless changed by the superior court on appeal from said decision of the selectmen. S. 2083.

New Bounds, How Marked.—Whenever a new highway or street is laid out by authority of any town, the same shall be marked or defined in the following manner: At the beginning and termination by stone, steel, or iron, bounds on each side and a stone, steel, or iron bound at each angle or deflection between the beginning and termination; stone bounds shall be not less than four inches square by two feet in length, with a mark on the top; steel or iron bounds shall be not less than one inch in diameter, if round, or not less than one inch square, and shall be two and one-half feet in length.

The authorities of towns making the layout shall at least once in five years personally examine such bounds, and renew all lost or misplaced ones. Upon written application of any person owning land bounded on a highway or street for bounds to be placed on such land, the authorities shall place bounds on the lines of the street or highway on such land; *provided*, that the cost of the same shall be first paid to such authorities by the applicant. The authorities making such layout shall have a proper description of said bounds recorded in the town clerk's office. S. 2085.

A committee appointed to mark the limit of a highway, having failed to find the original lines, were authorized to make a new layout.—*Walsh v. Ansonia*, 69 Conn. 558.

The municipal authorities are not authorized to establish controverted boundaries but merely to mark by permanent bounds undisputed highway lines.—*Kent v. Pratt*, 73 Conn. 573.

Encroachments, Removal.—If any person has enclosed or shall enclose any part of a highway or town common, the selectmen of the town in which the offense is committed, or a committee appointed by the town for that purpose, shall notify him to remove the encroachment within a reasonable time, not exceeding one month after such notice, and if he shall neglect to do so, the selectmen may remove it, and recover from him the expense of the removal; if he shall again so encroach upon such highway or town common he shall be fined seven dollars. The owner of the enclosure shall be deemed *prima facie* guilty of erecting such encroachment; and when such structure has once been removed the selectmen or committee may remove it, without further notice, as often as it shall be erected without authority of law. S. 4783.

The selectmen in bringing action to recover the expenses of notice and of removing an encroachment upon the highway under the statute did not act as agents of the town and the town was not interested in the event of a suit.—*Tomlinson v. Leavenworth*, 2 Conn. 292.

The individual members of a committee appointed by the town for the purpose cannot act. A majority of the committee is necessary to perform the duty.—*Martin v. Lemon*, 26 Conn. 192.

A town has no power to agree for a valuable consideration to discontinue a highway.—*Cromwell v. Stone Quarry*, 50 Conn. 470.

Freshet-water covering a highway held not a "want of repair" or an "encroachment," within the meaning of section 2674, and the elevated construction required to raise the road-bed above freshet-limit did not constitute a repair of a highway.—*Goodspeed's Appeal*, 75 Conn. 271.

Lay Out.— The selectmen of each town may lay out necessary highways therein, not being within a city or within a borough having by virtue of its charter, or by the provisions of this chapter, control of, and liability for, the highways within its limits, first giving reasonable notice in writing to the owners of the land through which the same are to be laid out, or leaving copies of such notice at their places of abode, if in this state, to be present at the laying out of such ways; and the damage done to such owners by such laying out shall be paid by the persons applying for such ways, if the same be for their private use only; but if such ways be for public use it shall be paid by the town; and a written survey, signed by the selectmen, particularly describing such way, with a description of each piece or parcel of land taken from or annexed to the lands of adjoining proprietors, being accepted by the town and recorded in its land records, and satisfaction being made to the persons injured, or the money deposited in the town treasury for their use, according to the agreement or estimate made as hereinafter provided, such way shall be and remain for the use for which it was laid out; but no highway or private way, laid out by the selectmen over the land of any person who shall declare himself aggrieved by laying out the same, shall be opened or occupied within twelve months after the acceptance of such survey. S. 2046.

Forty years' uninterrupted use of a highway is evidence that it was originally laid out.—*Canday v. Lambert*, 2 R. 173.

The conveyance of land with the usual covenants "saving and excepting said highway," vested the right of soil in the highway in the grantee subject to the right of passage in the public; and the grantee could maintain trespass *quare clausum fregit* against a stranger for continuing a shop erected by him on part of the highway not used for travel prior to the conveyance.—*Peck v. Smith*, 1 Conn. 103; *Watrous v. Southworth*, 5 Conn. 305.

The report of the committee to lay out a highway *held* inadmissible to prove a lay-out because not accompanied with evidence of the appointment of the committee nor of the acceptance of their report, and because the town in 1762 had not by law the power of laying out highways. The appointment, acceptance, or power cannot be presumed from lapse of time.—*Fowler v. Savage*, 3 Conn. 90; *Watrous v. Southworth*, 5 Conn. 305.

Where a survey designated only the line of a highway without specifying its width, it was *held* that such survey was inadmissible to prove the existence of a highway. Where bars across a highway had been kept up by the owners of the soil for about ninety years, it was *held* that evidence of this fact was admissible to prove an extinguishment of the public right.—*Beardsley v. French*, 7 Conn. 125.

The proprietors of land adjoining a highway have *prima facie* a fee in such highway to the middle of the way, subject to the easement.—*Chatham v. Brainerd*, 11 Conn. 60.

Notice by mail to the owner of land who resided in the state of New York to be present at the laying out of a highway, *held* to be reasonable notice.—*Crane v. Camp*, 12 Conn. 464.

In the absence of words in a conveyance excluding the highway, the grant carries with it the fee to the center of the highway.—*Champlin v. Pendleton*, 13 Conn. 23.

To constitute a dedication of land for a highway, the road must be made and accepted by the public. It is usually proved by public use and enjoyment.—*Curtiss v. Hoyt*, 19 Conn. 154.

A highway may be established by a dedication of the land by the owner to the public for that purpose. Acts on his part which have induced others to adopt a particular course of action are held to be binding and conclusive against him, and he will not be afterwards permitted to retract or repudiate them, to the injury of those who have been induced thus to act.—*Noyes v. Ward*, 19 Conn. 250.

The phrase "laying out," as used in the statute, includes not only the initiatory act of laying out the road by the selectmen but also the acceptance of the survey by the town and the recording thereof.—*Wolcott v. Pond*, 19 Conn. 597.

City highways must be recorded in the city records but need not be in the records of the town.—*Townsend v. Hoyle*, 20 Conn. 7.

Where the selectmen of a town expressly discontinued a highway as one originally laid out by their predecessors in office and such discontinuance was approved by the town and acquiesced in by the public, there being no record of any laying out of such road, nor any evidence of a dedication of the land to public use by any proprietor of the soil, it was held that the jury had a right to presume that such highway was originally laid out by the selectmen, and was one which they had a right to discontinue.—*Brownell v. Palmer*, 22 Conn. 107.

The acceptance which is necessary to the establishment of a highway by dedication is the act of the public in using it, not of the town in repairing or in some other mode adopting it.—*Green v. Canaan*, 29 Conn. 157.

A committee of the original proprietors of lands surveyed and laid out the highway three rods wide in 1752, and the highway had ever since been used and repaired as a public highway. Held that, although the committee had no power to establish a legal highway, yet their act, accepted by the proprietors, was a dedication of the land to the public for a highway.—*State v. Meritt*, 35 Conn. 314.

The vote of a town accepting a highway on the report of the selectmen held inoperative because no notice of such action was given in the warning of the town meeting.—*State v. Taff*, 37 Conn. 392.

A railroad company can dedicate land for a public highway, but an intention to do so must be manifested; it will not be presumed.—*Williams v. Railroad Co.*, 39 Conn. 509.

Facts showing a dedication of land for a public highway.—*Hamlin v. Norwich*, 40 Conn. 13.

A city's right to assess the expense of constructing a street upon parties benefited is the same where the land has been dedicated, as if the street had been formally laid out.—*Meriden v. Camp*, 46 Conn. 284.

A strip of the highway fashioned for convenient use as a footpath and expressly intended for the benefit of pedestrians is a sidewalk, although not separated from the rest of the highway by any curb, gutter, or other dividing line.—*Hillyer v. Winsted*, 77 Conn. 305.

Damages or Benefits Ascertained.—If the selectmen of any town, and any person interested in the layout, opening, grading, or alteration of any highway or private way therein, cannot agree as to the damages sustained by, or the benefits accruing to, such person thereby, the selectmen shall apply to any judge of the superior court, who, having caused reasonable notice to be given to the parties interested, shall appoint a committee of three disinterested electors, to estimate and assess to each person injured or benefited the damages sustained by or the benefits accruing to him by such layout, opening, or alteration of such way; and such committee having thereupon given at least ten days' notice to the parties interested of the time and place of their meeting, shall under oath make such estimate and assessment, and forthwith report their doings to the superior court in the county in which the land is situated. S. 2054.

The property of the state cannot be assessed for the construction of a public sewer without a special act of the legislature authorizing it.—*State v. Hartford*, 50 Conn. 89.

The selectmen are authorized to submit a claim for damages by the change of grade of a highway to arbitration.—*Mallory v. Huntington*, 64 Conn. 88.

In estimating the damages caused by a change of grade, the injury to trees, fences, sidewalks, access to the land may be taken into consideration.—*Platt v. Milford*, 66 Conn. 320.

The land-owner has no right of action against the town to recover damages for change of grade of a highway until the selectmen have refused, or neglected for an unreasonable time, to apply for the appointment of appraisers.—*Sisson v. Stonington*, 73 Conn. 348.

The "Good Roads Act" (General Statutes, 1902, §§ 2086–2088) does not repeal any part of the statute (§ 2051) making municipalities liable for special damages resulting from a change of grade. Work done under the act is still begun and controlled from first to last by the town. The provisions giving state officers certain authority concerning roads are intended merely to insure good work and to guard the state treasury against improper expenditures.—*Griswold v. Guilford*, 75 Conn. 192.

Any elevation or depression of the existing surface of an established highway which has never been brought to a uniform grade, resulting from an attempt to establish such grade, is a change of grade, which, if injurious, will support an action for damages.—*Pickles v. Ansonia*, 76 Conn. 278.

Making the surface of the ground conform to the level established in the layout of the highway is not a change of grade for which an adjoining land-owner is entitled to recover special damages under General Statutes, section 2051.—*Gorham v. New Haven*, 76 Conn. 700.

Lay Out, Refusal.—When the selectmen of any town shall refuse to lay out any necessary highway, or to make any necessary alterations in any existing highway, any person may prefer an application to the superior court of the county in which such town is, accompanied by a summons signed by proper authority, to be served in the same manner as civil process on one of such selectmen, to appear and be heard thereon; and unless the parties shall agree as to the judgment to be rendered, such application shall be heard and decided by a committee of three disinterested persons to be appointed by the court. S. 2065.

In an application to the county court for a highway, a finding by the court on a hearing before them, without sending out a committee, that the road prayed for is of common convenience and necessity, is regular and sufficient.—*Windsor v. Fields*, 1 Conn. 279.

Where the report stated that the highway "would be of public advantage and convenience, and that the same ought to be made," and the court accepted the report, the finding by the court was sufficient to authorize the laying out of the highway.—*Lockwood v. Gregory*, 4 D. 407.

In a petition to the county court for a highway from place to place within the same town, an averment that the selectmen of the town neglected and refused to lay out the highway is indispensable to give jurisdiction to the court. It is not necessary to allege a special demand or request of the selectmen to lay out the highway.—*Waterbury v. Darien*, 8 Conn. 162; *Treat v. Middletown*, *Ibid.* 243; *Torrington v. Nash*, 17 Conn. 197.

The circumstance that all the inhabitants of the town as well as one of the selectmen were cited to appear and defend does not vitiate the proceeding.—*Plainfield v. Packer*, 11 Conn. 580.

Leaving a copy of the petition for a highway at the usual place of abode of one of the selectmen is a good service.—*Winchester v. Hinsdale*, 12 Conn. 85.

The finding of the court is conclusive of the fact of neglect and refusal on the part of the selectmen.—*Huntington v. Birch*, 12 Conn. 142.

The court may find the fact of neglect and refusal by the selectmen after the report of the committee has been filed.—*Southington v. Clark*, 13 Conn. 370.

An agreement to refer the petition to the county commissioners, *held* to be equivalent to a finding that the parties did not agree.—*Harwinton v. Catlin*, 19 Conn. 520.

Where the survey presented by the selectmen to a town meeting was rejected by a vote of the town, it was *held* that the county court had jurisdiction of the case.—*Wolcott v. Pond*, 19 Conn. 597.

A committee may determine the location of a highway giving access to a ferry and of a tract adjoining the landing-place with permission to land on any part and to use and pass over the same as a highway.—*Wethersfield v. Humphrey*, 20 Conn. 218.

County commissioners may lay out a highway over a cove or creek in which the tide ebbs and flows.—*Groton v. Hurlburt*, 22 Conn. 178.

A petition may be withdrawn before the commissioners have made a formal decision upon it.—*West v. Tolland*, 25 Conn. 133.

The town is the party respondent, and service on one of the selectmen is sufficient in a proceeding on application to the superior court.—*Baker v. Windham*, 25 Conn. 597.

The term "those interested therein" applies to persons whose lands might be taken, or might be injuriously affected by the laying out of the highway.—*Shelton v. Derby*, 27 Conn. 414.

The facts to be found by the committee.—*Pierce v. Southbury*, 29 Conn. 495.

A town by assenting to the appointment of a committee waives all objections to disqualification. The land-owners were not affected by the waiver and were entitled to have a disinterested tribunal in the first instance. The selection by a committee of another line not previously examined, without notice and without hearing, *held* to be irregular and improper.—*Pond v. Milford*, 35 Conn. 32.

A highway petition reported against by a committee and dismissed by the court was *held* to be *res judicata* and barred a new petition on the same matter.—*Terry v. Waterbury*, 35 Conn. 526.

The highway may be constructed across a navigable stream although it will require a drawbridge for the accommodation of the public.—*Brown v. Preston*, 38 Conn. 219; *Bryan v. Branford*, 50 Conn. 246.

Where a proposed highway runs from a town in one county to an adjoining town in another county, the superior court in each county may lay out the portion of the road within its county.—*Peckham v. Lebanon*, 39 Conn. 231.

Two of five selectmen accepted service of a petition. Afterwards an agent of the town appointed to attend to all suits brought against the town agreed with the petitioner that the court might appoint a committee. *Held* to be an appearance of the town. Questions of practice discussed.—*Ives v. East Haven*, 48 Conn. 272.

When one member of a committee removes from the state the other two members may proceed and complete their work as a committee, in the absence of any application to the court or request to the committee that the vacancy should be filled.—*Smith v. New Haven*, 59 Conn. 203.

A party failing to appeal is estopped from questioning the correctness of the judgment and cannot have an injunction to restrain its enforcement.—*Fenwick Hall v. Old Saybrook*, 69 Conn. 32.

Width of Streets, Openings.—No person, company, or corporation, excepting municipal corporations, shall lay out any street or highway in this state less than three rods in width unless with the prior written approval of a majority of the selectmen of the town, wherein such street or highway is located. No street or highway shall be opened to the public until the grade, width, and improvements of such street or highway shall have received the written approval of the selectmen of the town. S. 2050.

Discontinued.—The selectmen of any town may, with its approbation, by a writing signed by them, discontinue any highway, or private way therein, except when laid out by a court or the general assembly, and except where such highway is within a city or within a borough having control of highways within its limits. S. 2056.

Discontinued turnpikes become public highways, but may be given up by the town and discontinued as provided in section 2056. S. 2057.

The non-user of a highway for many years is *prima facie* evidence of a release of the public right to the owner of the soil.—*Beardslee v. French*, 7 Conn. 125.

The express discontinuance of a public highway by the selectmen, approved by the town, and acquiesced in by the public raises a presumption that it was originally laid out by the town authorities and they had a right to discontinue it.—*Brownell v. Palmer*, 22 Conn. 107.

A road originally built by a turnpike company is regarded as laid out by the general assembly and could not be discontinued by proceedings under the statute.—*Simmons v. Eastford*, 30 Conn. 286.

A canal company having established a substitute highway and afterwards abandoning its location, it was *held* that the land was freed from the easement held by the company.—*Benham v. Potter*, 52 Conn. 248.

The sole question before a committee is whether the road is required by common convenience and necessity.—*Scutt v. Southbury*, 55 Conn. 405.

It is immaterial whether the action of the town precedes or follows the act of the selectmen in discontinuing a highway.—*Welton v. Thomaston*, 61 Conn. 397.

Old Highway.—[In laying out a railroad, when the discontinuance of an old highway becomes necessary, the selectmen of any town may discontinue such parts of the old highway as in their judgment are not of public convenience and necessity. S. 3729.

When the authority conferred upon railroad commissioners trenches upon the (supposed) exclusive jurisdiction of a particular municipality, the latter must give way on grounds of general public policy.—*Cullen v. N. Y. R. R. Co.*, 66 Conn. 211.

Dike Against Tides, Benefits.—Whenever a highway is so constructed that it is capable of being used as a dike, to prevent the overflow of the tides, the selectmen of the town in which the same is located may assess, or cause to be assessed the benefits accruing to any owner of the low lands protected thereby and by the construction of proper tide-gates at suitable points to permit the egress of water; *provided*, that not more than one-half the cost of constructing and opening such highway over such low lands shall be assessed against the owners of such lands; and the cost of tide-gates may be included in the cost of such highway. S. 2058.

Repairs.—Towns at their annual meetings may provide for the repair of their highways, for periods not exceeding five years, and if any town neglect to so provide at such meeting, the selectmen may provide for such repairs for a period not exceeding one year. S. 2012.

Repairs, Material for.—Whenever material for making or repairing any public highway in any town cannot be obtained without great

inconvenience from land sequestered for highways, but may be found on land abutting on the highway other than in a home lot, the selectmen of such town may take such material from said land on payment to the owner of a reasonable compensation therefor, to be ascertained before any such taking either by agreement between the selectmen and the owner, or as provided in section 2054. And after said compensation shall have been so determined, said material shall not be taken until the town in lawful town meeting shall have approved the transaction, if the owner of said material shall within one month thereafter make a request in writing to the selectmen that the town shall take such action. S. 2059.

Selectmen, Meaning of Word.—The word, “selectmen,” whenever the same occurs in the statutes which relate to the care and maintenance of highways, shall, in relation to towns having a consolidated town and city government and bound to care for and maintain the highways therein, be construed to mean the board, officer, or commission, as the case may be, having charge of the care and maintenance of such highways. S. 2082.

Trees Set Out in.—Any person or association may, with the written permission of the selectmen of the town in which a highway is situated, recorded in the land records of the town, set out trees in such highway and protect them by suitable posts and stakes, when said selectmen shall judge that said trees will not interfere with public travel or injure the owner of land adjoining such highway; and no such tree, post, or stake shall be removed except by written order of such selectmen when necessary for the purpose of repairing or grading such highway, or making it convenient for public travel. S. 2041.

Trees Protected, Designated.—The selectmen of towns are authorized and may at any time designate trees within the limits of highways, at least one tree in each thirty-three feet, for the purpose of ornament and shade, such trees to be of a diameter of one inch or more. They shall designate such trees by driving into them a nail or spike with a head having the letter C plainly impressed upon it, to be furnished by the secretary of state; and they shall, whenever requested so to do in writing by three tax-payers, examine sections of highways and designate such trees, and shall renew such spikes and nails as shall be destroyed or defaced. S. 2043.

Insane Persons, Committed to Asylums.—A complaint may be made to the probate court of the district by the selectmen of the town in which an insane person shall be at large and dangerous to the community, or in which he resides. S. 2736.

Where a town paid the expenses of restraining and confining a destitute lunatic, it was *held* that it might recover such expenses of the father of the lunatic who was of sufficient ability to pay the same.—*Bennett v. Canterbury*, 23 Conn. 356.

Intoxicating Liquors.—The laws of Connecticut provide that whenever any town shall have voted at its annual town meeting that no person shall receive a license for the sale or exchange of spirituous and intoxicating liquors within the town, the selectmen shall appoint, in towns of not more than five thousand inhabitants, a suitable person to act as agent of the town for the purchase and sale of such liquors, for the purposes named in the statute and none other, and in towns of more than five thousand inhabitants, the selectmen may appoint one such agent for each five thousand inhabitants and for any fraction exceeding one-half thereof. Such agents may be removed by the selectmen at pleasure and others appointed in their stead. The selectmen authorize the town treasurer to furnish to such agent the necessary money for the purchase of such liquors. S. 2722.

Agent; Bond; Duties.—The agent is required to give a bond to the treasurer of the town with sureties approved by the selectmen in the sum of not less than five hundred dollars.

He is required to carry on the business of his agency at a place to be designated by the selectmen, and in the purchase and sale of liquors to conform to rules and regulations prescribed by the selectmen, not inconsistent with law. He must keep a detailed account of his purchases and sales, which account is always open to the inspection of the selectmen, and when required by them shall fully account to the selectmen regarding all his dealings as such agent. SS. 2723, 2724.

The agent is not permitted to sell such liquors at more than twenty-five per cent. advance from the cost, and shall when required by the selectmen pay over to the town treasurer the net profit of all his sales, and shall receive for his services such fixed compensation as the selectmen may prescribe, which sum shall not be increased or diminished by reason of any increase or diminution of his sales. S. 2725.

List of Drinkers.—The selectmen of every town shall semi-annually, or oftener, at their discretion, prepare a list of persons known to use spirituous and intoxicating liquors to whom town aid has been furnished within the six months last past and lodge a copy thereof with each person licensed to sell such liquors in said town forbidding the sale, exchange, gift, or delivery of such liquors, including cider, to any person whose name appears on said list or to any member of his legal family, except upon a physician's prescription endorsed by a member of the board of selectmen in said town. S. 2693.

Sales Forbidden.—On complaint and request in writing by any person, the selectmen shall notify the licensed dealers not to sell, give, or exchange any spirituous, or intoxicating liquors to his or her father, mother, husband, wife, child, or ward, and shall keep a record of such notification; and they may revoke such notification at any time after one year. S. 2695.

Jurors, Selection of.—The selectmen of each town shall annually, during the month of May, select from the electors of their town the names of twice the number provided by law for jurors from said town, of such qualified persons not exempt from jury duty as they are satisfied and shall certify possess the qualifications mentioned in section 656; and they shall nominate such list on or before the first Monday of June in each year, to the clerk of the superior court in their several counties. A certificate of a form approved by the chief justice of the supreme court of errors, and prepared and sent to the selectmen of the several towns by the clerks of the superior court and signed by the selectmen, shall be affixed to each list. S. 657.

Land Records, Preservation of; Index.—The selectmen shall during the month of September in each year appoint some suitable person to carefully examine the indexes of the land records of their respective towns for the preceding year, and to note and report in writing to the town clerk all errors and omissions in the same.

They shall also in the month of September in each year ascertain the condition of all their town records, and cause any volume of such records to be carefully repaired, arranged in order of pages, and rebound, whenever such repairs and rebinding are necessary for the preservation of such records. In all towns in which there is no general index of the land records the selectmen may cause a general index to be made and appoint some competent person to make the same. S. 1837.

Lockup Provided.—The selectmen of any town may erect or lease a suitable building or apartments within their town for a lockup, in which persons awaiting trial or examination for offenses committed in such town may be confined until they shall be disposed of according to law. S. 1941.

Lodging-Houses, License.—The selectmen of any town may grant licenses for one year to suitable persons to be lodging-house keepers. Such lodging-house keepers are required to keep a register in which are entered the names of all persons lodging in the said house, which book shall be subject to inspection by the selectmen. S. 4669.

Lost Property, Unclaimed.—If no owner shall appear within twelve months after the registration or advertising of lost beasts or goods, the same shall belong to the town where they are found, and the selectmen may recover the value of the same for the use of the town upon paying the finder all charges. S. 4682.

Marriage of Female Minor, Consent.—In the case of a female having no parent or guardian who is a resident of the United States, the consent of the first selectman of the town where she has last resided for the period of six months shall be sufficient to authorize the marriage. S. 4535.

Militia, Enrollment.— The names of all male citizens of the state between the ages of eighteen and forty-five years, residing in each town on the first day of January subsequent to the last previous enrollment, shall, annually, at some time between the first day of January and the first day of February following, be enrolled alphabetically, by or under the supervision of the selectmen of the town in which they reside.

On such lists and opposite the name of every person exempt from military duty, or a minor, or in the active militia, the selectmen shall write "exempt," and the reason for such exemption, or "minor," or "active militia," as the case may be, and shall sign said lists, and file them in the office of the town clerk; and, annually, on or before the fifteenth day of February, report to the adjutant-general the total number enrolled, the number marked exempt and the reasons therefor, the number of minors, of active militia, of those liable to military duty, and of those liable to pay a commutation tax, and shall certify that they believe said lists to be correct. S. 2995.

Exemptions.— The following reasons shall exempt from such military duty: first, such physical or mental disabilities as shall be prescribed in general orders issued by the surgeon-general and approved by the commander-in-chief, printed copies of which approved general orders, specifying such reasons of exemption, shall be sent annually, on or before the first day of January, to the selectmen and town clerk in each town in the state by the surgeon-general; second, service in the army or navy of the United States and an honorable discharge therefrom; third, membership for the time being in a volunteer fire company in this state, *provided* such membership shall have continued at least one year; fourth, service for three years in the active militia of this state, or for three years consecutively in any volunteer fire company in this state; fifth, being a warden or deputy warden of the state prison; sixth, any further reason expressly provided by law; but the reasons specified in the clauses marked second, third, and fourth in this section shall not exempt from military duty in time of war, invasion, or rebellion, or reasonable apprehension thereof. S. 2997.

Commutation Tax.— The selectmen of every town shall on every rate-bill for its annual tax, add a tax of two dollars on every person enrolled as liable to military duty except minors and members of the active militia, which tax shall be in commutation of military duty. S. 2998.

Militia, Drafts.— The commander-in-chief shall apportion any draft of militia equitably among the several towns; and the order therefor shall be directed to the selectmen of each town, who shall thereupon amend the rolls therein by adding thereto the names of persons subject to enrollment, and by striking therefrom the names of persons exempted by the provisions of section 2997; and they shall appoint a time and place of parade for the militia in such town, and order them to appear

thereat, either orally or by leaving written or printed notices with them, or at their usual places of abode, or by publishing a notice thereof in some newspaper printed in the county in which said town is, and by posting a like notice on the public signposts in said town; and shall then and there proceed to draft such number by lot, or to accept such number of volunteers, as the order of the commander-in-chief shall require; and shall return to the adjutant-general the names of persons drafted or enlisted under said order, who shall thereupon be subject to the order of the commander-in-chief; and if any selectmen of any town shall neglect or refuse to comply with such order, the commander-in-chief shall appoint some proper person to execute the same, at the expense of such town, who shall make return of his doings to the adjutant-general. S. 2990.

Minors and Others Placed in Public Institutions.—The selectmen of a town in which may be found any pauper or indigent, imbecile child, or girl of idle habits, or any minor whose parents are unfit persons to have charge of him, or any insane pauper, or any insane person going at large, in a town other than that of his residence, may apply to the court of probate of the district or other proper authority to have a guardian appointed for such minors, or to have such girl or insane paupers or persons committed to a school, hospital, or other public institution provided by law for the care of such persons. SS. 221, 1832, 2742, 2755, 2787, 2839.

Municipal Debt, Quadrennial Return.—The first selectman of every town, shall, on the second Monday of October, 1904, and in every fourth year thereafter, make and return to the comptroller a clear and accurate statement, under oath, of all the items constituting the particulars of the total indebtedness of such town, on the first day of October next preceding such return; the purpose and object for, and the year in which such indebtedness was incurred; the form in which the same exists, and when payable; the amount actually raised by such corporation during the four years next preceding said first day of October, by taxation and by loan, and the amount actually expended during said period for interest, roads, paupers, salaries, schools, police and fire departments, and the rate per cent. of taxes laid during said period. Every such officer, who shall fail to make and return such statement within one month after the time limited herein, shall forfeit to the state one hundred dollars. S. 2364.

OVERSEERS OF THE POOR.

The selectmen of each town shall be overseers of the poor, and shall, at the expense of the town, provide all articles necessary for the subsistence of all paupers belonging to it. S. 2480.

Selectmen have power to settle an account presented by another town against their town for supplies furnished to a pauper belonging to their town.—*Sharon v. Salisbury*, 29 Conn. 113.

Paupers, Towns to Support.—All persons who have not estate sufficient for their support, and who have no relations able or obliged by law to support them, shall be provided for and supported at the expense of the town where they belong; and every town shall maintain and support all the poor inhabitants belonging to it, whether residing in it, or in any other town in the state. S. 2476.

Every town shall provide medical treatment by one or more competent physicians for all persons liable to be supported by such town when such persons are in need thereof, but not by contract by auction to the lowest bidder. S. 2478.

A transient person without means of support was committed to jail. *Held* that the town in which the jail was was not liable for support furnished by the keeper to the prisoner.—*Tyler v. Brooklyn*, 5 Conn. 185.

A town *held* liable for the support of a slave.—*East Hartford v. Pitkin*, 8 Conn. 393.

What constitutes "sufficient estate."—*Fish v. Perkins*, 52 Conn. 200; *Stewart v. Sherman*, 5 Conn. 244.

It cannot be held as a matter of law that a woman in feeble health, with young children to support, is debarred by statute from receiving aid from the town merely because she has \$10 a month at her command for the maintenance of herself and children.—*Old Saybrook v. Milford*, 76 Conn. 152.

Settlements.—No person who is not an inhabitant of this state or of some state or territory of the United States, who shall come to reside in any town in this state, shall gain a settlement therein, unless admitted by a vote of its inhabitants, or by consent of its justices of the peace and selectmen, a majority of whom convened and acting as one board shall be a quorum for that purpose. S. 2466.

Any two of the justices of the peace and selectmen of any town may call a meeting of such board for the purpose of giving such consent, by causing notices to be left with the other justices of the peace and selectmen at their usual places of residence at least three days before the time named for said meeting; and when assembled they shall decide upon all applications made to them, in behalf of persons residing in said town, to be admitted to settlement therein. S. 2467.

Forfeiture for Bringing in.—A person who shall bring into and leave in, or cause to be brought into and left in any town an indigent person, not an inhabitant of such town, who becomes chargeable within one year, shall, on demand of the selectmen thereof, remove such indigent person out of such town to the town from whence he came. If upon such demand he neglects or refuses to remove such person, he shall forfeit seventy dollars to the town where such indigent person was left; and if such person was so brought and left with intent to make him chargeable or any expense to said town, the person so offending shall forfeit and pay the town into which such person was brought and left one hundred dollars and the expense incurred by the town in the maintenance of such indigent person. S. 2475.

Disclosures of Property.— Every person applying for or receiving support from any town shall when requested by its selectmen make a full disclosure of his financial condition and of all property owned by him, and they may cause such disclosure to be reduced to writing, and require his oath and signature thereto. S. 2481.

All persons having property of, or indebted to, any person applying for or receiving support from any town, and officers of corporations having property of or indebted to, any such person, shall upon presentation by the selectmen of the town or their attorney of a certificate signed by them or him stating that such person has applied for or is receiving support from the town, make full disclosure to such selectmen or attorney as to any such property or indebtedness. S. 2482.

Supported Where.— All paupers shall be supported at some place or places within the town to which they belong, or in a town adjoining that to which they belong; and it shall not be lawful for any town or the selectmen thereof to remove any pauper out of the town to which he belongs to be supported in any town other than an adjoining town. S. 2491.

Supported in Almshouses.— It shall be unlawful for any town, or the selectmen, or agent thereof, to make any contract for the support of any person liable to be supported by such town. All such persons shall be supported in an almshouse or other place or places provided by such town, but temporary aid may be given to any person in need of partial support; and two adjoining towns may unite to support their paupers in an almshouse or other place or places provided by such towns within the limits of either of said towns. S. 2477.

Removal to Another State.— When any person who is an inhabitant of another state or country shall come to reside in any town in this state, and shall become chargeable during the first year of his residence in the town, the selectmen may at any time during such period apply to a justice of the peace in the town, who shall issue his warrant to either constable of said town ordering him to transport such pauper to the place in the adjoining state from whence he came or to the place of his former residence, at the discretion of the selectmen. Said constable shall execute such warrant and the expense thereof, having been first audited and approved by said selectmen, shall be paid by the town. S. 2473.

When a town which furnishes supplies to a pauper belonging to another town, has given notice to the town liable for his support, the town thus giving notice has done its full duty. No action lies for reimbursement for any further relief which it may furnish to such pauper.— *Backus v. Dudley*, 3 Conn. 568.

Subject to Selectmen; Claims for Supplies.— Paupers shall be liable to be removed to such places as the selectmen may lawfully designate, to be supported as the town or selectmen may direct, and shall be subject to the orders of the selectmen, and no individual shall have any

claim against a town, for supplies or assistance furnished to a pauper, against the express directions of the selectmen, nor before he has given notice of the condition of such pauper to one of the selectmen of the town where the pauper resides. S. 2484.

To enable an individual to recover against a town for supplies furnished to a pauper, he should give notice to one of the selectmen by the town of the condition of such pauper.—*Kent v. Chaplin*, 6 Conn. 72.

What constitutes "notice."—*Middletown v. Berlin*, 18 Conn. 189; *Wile v. Southbury*, 43 Conn. 53.

Selectmen are not confined to the limits of their town in the exercise of their powers in the removal of paupers.—*Harrison v. Gilbert*, 71 Conn. 724.

Removed from Other Towns.— When any person having a settlement in any town in this state shall go to reside in some other town, and, before he shall have gained a settlement in the town to which he has gone, he or any of his family shall become chargeable, the selectmen, after giving notice to the town to which said pauper belongs to remove him and his family and on failure of such town to make such removal, may apply to any justice of the peace, who shall issue his warrant, directed to either constable of said town where said pauper is, commanding such constable to remove such pauper to the town where he has his settlement. S. 2474.

A ward residing with his guardian gains no settlement thereby.—*Salisbury v. Fairfield*, 1 R. 131.

The temporary absence of a person from a town when it was incorporated does not affect his settlement there.—*Mansfield v. Granby*, 1 R. 179.

A person's settlement may be suspended but not lost until he gains another.—*Norwich v. Windham*, 1 R. 232.

A woman of this state married to an inhabitant of another state may gain a settlement here, if her marriage is void.—*Johnson v. Huntington*, 1 D. 212.

A pauper who has resided six years in a town is not affected by its incorporation during the period.—*Oxford v. Woodbridge*, 3 D. 224.

An agreement between towns for the support of a man held not to include the support of his widow after his death.—*Hebron v. Marlborough*, 3 Conn. 209.

A pauper who lives in the part of a town which is afterwards incorporated into a new town has a settlement in the new town.—*Vernon v. East Hartford*, 3 Conn. 475; *Simsbury v. Hartford*, 14 Conn. 192.

A person over whom an overseer has been appointed may during the continuance of such appointment gain a settlement by commorancy.—*Stratford v. Fairfield*, 3 Conn. 588.

A minor daughter living in another state in the family of her mother, a *feme sole*, is a part of that family within the statute of settlements.—*Norwich v. Saybrook*, 5 Conn. 384.

A pauper's settlement is transferred when the territory in which he lives is annexed to another town.—*Oxford v. Bethany*, 15 Conn. 246; *Bethany v. Oxford*, *Ibid.* 550; *Waterbury v. Bethany*, 18 Conn. 424; *Colchester v. East Lyme*, *Ibid.* 480; *Haddam v. East Lyme*, 54 Conn. 34.

The word "belongs," when used in a statute referring to the poor, designates the place of legal settlement of the person referred to. The period of imprisonment for crime does not constitute any portion of the residence requisite to the acquisition of a legal settlement.—*Reading v. Westport*, 19 Conn. 561.

Temporary absence with intention to return does not affect the acquisition of a settlement by residence for the statutory period.—*New Milford v. Sherman*, 21 Conn. 101.

Evidence tending to show the support and residence of a pauper.—*Marlborough v. Sisson*, 23 Conn. 401.

The selectmen may remove paupers from the town in which they are chargeable to the town of their settlement, without legal process.—*Harrison v. Gilbert*, 71 Conn. 724.

Of Other Towns.—When a person, not an inhabitant of the town in which he resides, shall become poor, and unable to support himself, the selectmen of such town shall furnish him with necessary support as soon as his condition shall come to their knowledge; and each selectman neglecting such duty shall forfeit seven dollars to him who shall sue for the same. The selectmen of every town, in which a pauper belonging to another town is chargeable, shall give notice of his condition to the town to which such pauper belongs, when it is within twenty miles of their own town, within five days after they shall know to what town he belongs, and when it is more distant, within fifteen days thereafter; and a letter deposited in the post-office, postage paid, stating the name of the pauper, and that he is chargeable, signed by a selectman of the town where he resides, directed to the selectmen of the town where he belongs, shall be sufficient evidence that notice was given at the time that such letter would, in the usual course of the mail, reach the selectmen to whom it was directed; and actual notice in writing, sent in any other mode, shall be sufficient; and when the selectmen have knowledge of the town where such pauper belongs, such town shall not be liable for any expense for the time during which there was a neglect to give such notice; and such town shall not be liable to pay at a greater rate than three dollars a week for all persons over fourteen years of age, and two dollars a week for all persons between six and fourteen years of age, and one dollar and fifty cents a week for all persons less than six years of age. *Provided*, that where such persons are sick and receive medical attendance, or are supported and cared for in a public hospital, such town shall not be liable to pay at a greater rate than five dollars per week. S. 2485.

Omission to aver notice to defendants of the demand was cured by the verdict.—*Spencer v. Overton*, 1 D. 183.

If the selectmen of a town, against whom a claim is made for the support of a pauper, deny that such town is bound to support the pauper, it is an implied waiver of particular notice.—*Newtown v. Danbury*, 3 Conn. 553.

Actual request or express promise on the part of the defendants is not necessary to a recovery.—*Goshen v. Stonington*, 4 Conn. 209.

Where it appeared that a person without his own knowledge was the owner of a promissory note for \$96 against a solvent person, it was *held* that while this property continued to be vested in him, he could not be a pauper with a claim upon the town for support.—*Botford v. Morehouse*, 4 Conn. 553.

Where a person has estate, whether accessible to him or not, the town cannot be subjected to his support.—*Stewart v. Sherman*, 5 Conn. 244.

The fact of putting a letter containing a notice into the mail may be proved like any other fact.—*Litchfield v. Farmington*, 7 Conn. 100.

Where a slave after the death of her master came to want, it was *held* to be the duty of the selectmen of the town in which she resided to relieve her.—*East Hartford v. Pitkin*, 8 Conn. 393.

Facts tending to show that a man was a pauper.—*Lyme v. East Haddam*, 14 Conn. 394.

The question, in determining whether a man is a pauper, is whether he has property of substantial value which could be reasonably appropriated and made to contribute to the support of himself and family.—*Wallingford v. Southington*, 16 Conn. 431; *New Milford v. Sherman*, 21 Conn. 101.

A notice in the words "E. H., wife and children of your town are here sick and on expense," held sufficient as to the man and his wife but not as to the children.—*Middleton v. Berlin*, 18 Conn. 189.

The object of the law is to provide for the immediate relief of suffering paupers without reference to the liability of other towns for their support. One who is temporarily in a town when he needs relief is residing therein within the meaning of the statute.—*Trumbull v. Moss*, 28 Conn. 252.

A notice in the words "Mrs. Phelps, an inhabitant of M., is on expense in the town of S.," held insufficient as not giving the name of the pauper.—*Salem v. Montville*, 33 Conn. 141.

A notice describing the pauper as "the infant child of A. P.," held sufficient.—*Washington v. Kent*, 38 Conn. 249.

A physician attending upon a pauper called at the house of one of the selectmen and not finding him, told his wife and son that he had called for the purpose of notifying the selectman, and would look to the town for compensation, which information was on the same day given to the selectman; held to be a sufficient notice.—*Wile v. Southbury*, 43 Conn. 53.

The expression "on the expense of the town" was a sufficient statement that the person was a pauper.—*Hamden v. Bethany*, *Ibid.* 212.

A notice which refers only to expenses to be incurred by a town is not sufficient.—*Beacon Falls v. Seymour*, 44 Conn. 210.

It is not necessary that the selectmen should act as a body or on consultation; any one of them is empowered to furnish the relief needed.—*Welton v. Wolcott*, 45 Conn. 329.

A family in want is "poor and unable to support themselves" within the statute, although the father earns enough for their partial support.—*New Hartford v. Canaan*, 52 Conn. 158.

The neglect of the selectmen of a town supporting a pauper to give notice of his condition to the town to which he "belongs," prevents a recovery from the latter for such part of the expense as was incurred after the selectmen knew to what town the pauper belongs.—*Fairfield v. Newtown*, 75 Conn. 515.

Expense Recovered from Other Town.—Every town incurring any necessary expense pursuant to sections 2485 and 2486 for a pauper belonging to another town may recover it from such town. S. 2487.

A judgment of one town against another for supplies furnished to a pauper is not a judgment *in rem*, and is binding only on the parties to the suit and their privies.—*Bethlehem v. Watertown*, 47 Conn. 237.

The admissions of the selectmen in regard to the residence of a pauper in ignorance of the facts, do not estop the town from denying liability on his account after the facts have become known.—*Clinton v. Haddam*, 50 Conn. 84.

A judgment involving the settlement of certain paupers recovered against a plaintiff town cannot be used as evidence in another controversy.—*Bethlehem v. Watertown*, 51 Conn. 490.

Return to State.—The town in which any person is legally settled, who shall gain a legal settlement in another state and afterwards returns to this state and becomes a pauper, shall be chargeable with his support. S. 2489.

A statute making a person chargeable to a given town makes a minor child residing in his family a pauper chargeable to the same town, unless a contrary intention clearly appears.—*Bridgeport v. Trumbull*, 37 Conn. 484.

Paupers' Relatives to Furnish Support.—When any person shall become poor and unable to support himself or herself and family, and shall have a husband, father or mother, grandfather or grandmother, children or grandchildren, who are able to provide such support, it shall be provided by them; and if they shall neglect to provide it, the selectmen of the town, or the wife of such husband, or any of such relatives, may bring a complaint therefor to the superior court of the county in which such poor person resides, against such husband or any of such relatives able to provide; which court may order the defendant or defendants to contribute to such support, from the time of serving such complaint, such sum as may be reasonable and necessary, and may issue execution monthly or quarterly for the same, which, when collected, shall be paid to said selectmen or to said wife or other person needing support, for that purpose, as the court may order. When such complaint is brought by the selectmen or wife, the court, or any judge thereof in vacation, may require the defendant or defendants to become bound with sufficient surety to such town or wife to abide such judgment as may be rendered on said complaint. S. 2499.

Daughters' husbands are not liable for the support of their wives' parents.—*Sherman v. Nichols*, 1 R. 250.

The relatives of a pauper cannot be subjected at the suit of the town in which he has no settlement; nor in any suit for expenses previously incurred, the only mode being by order of the county court operating prospectively.—*Newtown v. Danbury*, 3 Conn. 553.

A wife whose husband neglects to support her may bring an action against him and secure an order of the court requiring him to contribute a reasonable sum towards her maintenance.—*Cunningham v. Cunningham*, 72 Conn. 157.

Burial of.—When a pauper not an inhabitant of the town where he resides, or a state pauper, shall die, the selectmen of said town shall give said pauper a decent burial; and for the expense thereof, the town where such pauper belongs, or if a state pauper, the state, shall pay a sum not exceeding fifteen dollars to the town burying such pauper. S. 2486.

Dead, Sale of Property.—When any person supported at the expense of any town shall die, leaving personal estate not exceeding fifty dollars in value, the selectmen of such town may sell it, for the use of the town, unless some person interested in such estate shall take out administration thereon, within ninety days after such death. S. 2488.

Records and Returns.—Overseers of the poor shall keep full and accurate records of the paupers fully supported, the persons relieved and partially supported, and the travelers and vagrants lodged at the expense of their respective towns, together with the amount paid by them for such support and relief, and shall annually in September make return of the number of persons supported and relieved, with the cost, to the state board of charities. S. 2492.

State, Reimbursement for Support.—Each town, through its selectmen, shall furnish necessary support to all state paupers therein, and shall be reimbursed by the state therefor. As soon as the selectmen ascertain the fact that the pauper is a state pauper, one of them shall forward to the comptroller a statement containing the facts as they may be known by the selectmen, as to the name of the pauper; as to the time he came into the state and into the town; as to where he so came from; as to the expenses then necessarily incurred in maintaining him; as to the time when said expenses began; which statement shall be signed and sworn to by one of said selectmen. At the end of six months after such pauper came into the state, or was discharged from the prison, jail, or workhouse, one of the selectmen of said town shall send to the comptroller an account of all the disbursements made by said town on account of said pauper, which account shall be sworn to by the selectman signing the same. S. 2494.

Widow, Support by Husband's Heirs.—In certain cases, the selectmen of a town may bring a complaint to the superior court in the county where a poor widow resides against all or any of the persons, except the plaintiff, to whom any of the estate of the widow's deceased husband has been given or descended. Said court may order the defendant or defendants to contribute to the support of such widow. S. 2500.

Poorhouses, Established.—Any town may establish one or more poorhouses for the admission of poor persons, and adopt by-laws for their management, which may at any time be repealed by the superior court. S. 2490.

The keeper of a poorhouse may restrain its inmates from committing acts of mischief by a reasonable amount of force, but he may not treat them in a barbarous manner.—*State v. Hull*, 32 Conn. 132.

The six months intended by the statute is the first six months of pauperism, not the first six months after the arrival of a pauper in the state.—*Marlborough v. Chatham*, 50 Conn. 554.

The status of a pauper is fixed by the law in force when he first applied for relief, and is not affected by a later statute.—*Canton v. Burlington*, 58 Conn. 277.

Overseers of Spendthrifts, Appointment.—The selectmen of any town may appoint an overseer of a person likely to spend and waste his estate and become chargeable to the town, to advise and order him in the management of his business; such appointment shall be under their hands, specifying the cause and the time, not exceeding three years for which it is made, and shall be set upon the signpost in said town, and a copy thereof shall be lodged with the town clerk of the town; no such appointment shall be made unless the selectmen shall have given such person at least five days' previous notice in writing of the time and place of such appointment. And the selectmen may remove such overseer for neglect of duty or mismanagement of his trust. S. 1833.

Selectmen are liable in damages for appointing an overseer of a person without just cause.— *Waters v. Waterman*, 2 R. 214.

The statute must have a strict construction and be strictly pursued, as it is in derogation of common right.— *Knapp v. Lockwood*, 3 D. 131; *Strong v. Birchard*, 5 Conn. 357.

The appointment of an overseer must be for a reasonable time expressly limited; otherwise it is void.— *Chalker v. Chalker*, 1 Conn. 79.

Selectmen of a town are not, by virtue of their authority as overseers of the poor, authorized to collect and discharge the debts of a pauper.— *Fielding v. Jones*, 38 Conn. 191.

Patrolmen, Appointment of.— Any town may authorize its selectmen to appoint such number of patrolmen as it may determine upon, with the powers of constables to serve criminal process and arrest for crime. S. 1825.

Pawnbrokers' Licenses.— The selectmen of any town may grant licenses to suitable persons to be pawnbrokers, and may revoke such licenses for cause. They shall continue for one year unless sooner revoked and shall designate the place where the business is to be carried on. Every pawnbroker is required to keep a book, to be furnished by the selectmen and subject to their inspection, in which shall be written in English a description of the articles pledged with him, together with the name, residence, and general description of the person from whom, and the day and hour when each article was received. The place and articles received may be examined at all times by the selectmen, or any person by them designated. SS. 4655, 4656.

Perambulation of Town Lines.— Once in every five years the selectmen of adjoining towns shall appoint and pay two or more persons to perambulate the lines and renew the bounds and monuments between their respective communities. S. 1911.

When the selectmen of adjoining towns or of a town and the warden and burgesses of a borough, the mayor and clerk of a city therein, or adjoining shall not agree as to the place of the divisional line between their respective communities, the superior court upon the application of either shall appoint a committee of three to fix said disputed line and establish it by suitable monuments, and report their doings to said court. S. 1912.

The action of the committee appointed to determine town boundaries, when accepted and recorded by the towns interested, is final and cannot be reviewed except for fraud or other irregular or improper conduct on the part of the committee.— *Suffield v. E. Granby*, 52 Conn. 175.

Plumbing and Drainage, Regulation.— The selectmen of any town shall have power, by ordinance or by-laws to regulate plumbing and house drainage, and the licensing of master plumbers. S. 1917.

Public Safety; Exits to Public Buildings.— In all towns and parts of a town not within a city or borough, the selectmen shall require that all churches, schoolhouses, and public halls that are used for lectures,

amusements, exhibitions, or assemblages of people, shall be provided with ample facilities for safe and speedy entrance and exit in case of necessity, be arranged so as to promote the comfort and safety of persons visiting them, and be closed till such requirements are complied with. S. 2607.

Inspection of Buildings.—The selectmen of any town may, and on the written application of any of its inhabitants, shall examine any building or proposed building therein with reference to its safety, after reasonable notice to the owner, or builder and occupant, and may make such written order relative to its construction, maintenance, protection, repairs, or removal as they may deem proper; an attested copy of such order shall be left with or at the usual place of abode of such occupant and such owner or builder if resident in this state. S. 2611.

Railroads; Grade Crossings, Removal.—The selectmen of any town, within which a highway crosses or is crossed by a railroad, may bring their petition in writing to the railroad commissioners, alleging that public safety requires an alteration in such crossing, its approaches, the method of crossing, the location of the highway or crossing, the closing of a highway crossing and the substitution of another therefor, not at grade, or the removal of obstructions to the sight at such crossing, and praying that the same may be ordered. S. 3713.

The statute operates as an amendment of the charter of each of the railroad corporations affected by it, and is binding upon the corporation.—*N. Y. & N. E. R. R. Co.'s Appeal*, 62 Conn. 527.

The railroad commissioners are the sole judges of the question whether or not public safety requires any change of highway at a grade crossing subject to an appeal to the superior court.—*State's Attorney v. Branford*, 59 Conn. 402.

The statute upheld as a police regulation.—*Town of Westbrook's Appeal*, 57 Conn. 95; *N. Y. & N. E. R. R. Co.'s Appeal*, 58 Conn. 532.

If the facts warrant it, the commissioners may impose the whole burden of expense upon the railroad company.—*Town of Fairfield's Appeal*, 57 Conn. 167.

The damages resulting from closing a street constitute a legitimate part of the "expense" of the improvement named in the statute.—*Cullen v. N. Y., N. H. & H. R. R. Co.*, 66 Conn. 228.

The railroad commissioners have authority to locate an abutment in a highway in eliminating a grade crossing.—*Bristol v. New England R. Co.*, 70 Conn. 305.

Guards for Rails at Crossings.—If the selectmen of any town shall represent in writing to the railroad commissioners that a company has failed to comply with the requirements of this section in regard to any highway in their town said commissioners shall examine such crossing and make such order as they may deem necessary to carry out the provisions of this section. S. 3730.

A city has no right to enter upon the lay-out of a railroad and construct or repair a highway grade crossing. This work devolves upon the railroad company, and in case of neglect or refusal, may be required by the railroad commissioners.—*N. Y., N. H. & H. R. R. Co. v. New Haven*, 70 Conn. 390.

Gates; Flagmen, and Signals.—The railroad commissioners, when requested in writing by the selectmen of any town to order a gate, or

electric signal to be erected, or a flagman to be stationed, at any railroad crossing within such town, shall visit such place, first giving reasonable notice to the parties interested, and, if they find that the public safety requires it, shall grant such request. S. 3888.

Only those safeguards are required which are prescribed by statute unless others are ordered by the railroad commissioners.—*Dyson v. N. Y. & N. E. R. R. Co.*, 57 Conn. 23.

Signals.— Upon petition of the selectmen representing that the public interest requires that the blowing of an engine whistle at certain points within the town shall be dispensed with, the railroad commissioners after notice to the railroad company, and a hearing, may direct the railroad company to omit such signal and require any other signal which they shall judge best. S. 3792.

Change of Highway Near.— When a railroad has been laid out, located, or constructed so near a highway as in the opinion of the selectmen of any town within which said highway is situated, to endanger public travel, such selectmen may bring their petition to the railroad commissioners, setting forth the facts. S. 3722.

Whistles; Switches; Footways.— The railroad commissioners, upon a written request or complaint by the selectmen, may require any railroad company to cause the engine whistle to be sounded at any highway crossing when a train passes over or under such highway. They shall also upon like request of the selectmen examine the railroads and street railways in the town and see that the same are kept in suitable repair, and that the companies operating them comply with all the provisions of the law; they shall also, upon like request and upon a hearing, after due notice to the railroad company, make such regulations concerning the business connections of any connecting railroad as are not convenient and reasonable for the accommodation of the inhabitants on the line of such railroad as they shall deem proper. The commissioners, upon request of the selectmen, shall also examine and inquire into the facts concerning a footway upon the line of any railroad bridge or causeway within the limits of a town, which in the opinion of the selectmen should be established for the public convenience, whenever the railroad company owning such bridge or causeway shall not consent thereto. SS. 3790, 3887, 3760, 3732.

Refining Oils Regulated.— No person or corporation shall refine crude or petroleum oils upon the shores of any waters of this state except under such regulations as may be imposed by the selectmen of the town. S. 2635.

Registrar of Voters, Appointment of.— If any registrar of voters shall be elected to the office of town clerk or selectman and accept the office, he shall thereupon cease to be registrar; and if any town clerk

or selectman shall be elected registrar of voters, the election shall be void; and in either case the selectmen shall forthwith appoint another registrar by a writing signed by them and filed with the town clerk; but the person so appointed shall be a member of some other political party than that to which the other registrar belongs. SS. 1805, 1598.

Returns Under Oath.—All reports or returns in any respect concerning public finances or the reception or disbursement of public funds, made by selectmen regularly in the line of their duties to any body, meeting, or committee acting in a public capacity, shall be verified by the oath of the person or persons making the same. S. 1971.

Rewards for Information Concerning Criminals.—When any crime or misdemeanor shall have been committed in any town, its selectmen may offer publicly a reward, not exceeding two hundred dollars, to the person who shall give information leading to the arrest and conviction of the guilty person. S. 1069.

Riotous Assemblies Dispersed.—Every selectman upon notice of any riotous assembly of three or more persons in his town, met with intent to do any unlawful act with force against the peace, shall resort to the place of such meeting, or as near thereto as he can with safety, and shall audibly command silence while proclamation is being made and then audibly make proclamation, commanding in the name of the state all persons assembled to disperse and peaceably to depart to their habitations, or to their lawful business on penalty of law; and if such persons or any three or more of them shall not disperse, he shall command every justice of the peace, sheriff, deputy sheriff, constable, or selectman present, and such others as he shall command to assist him in dispersing and apprehending such rioters, and forthwith carry them before proper authorities. S. 1277.

If any person shall be killed or hurt, while resisting those so dispersing or endeavoring to disperse or apprehend them, all such officers and all persons aiding them shall be discharged from all civil or criminal liability therefor. S. 1279.

Road, Improved, Constructed.—Whenever any town shall have declared its intention to build a public road or a section thereof within the town, or to improve the same under the provisions of this section and section 2088, the selectmen of the town, with the approval of the highway commissioner, shall select a highway or portion thereof to be so built or improved, and shall cause all necessary surveys to be made and submit the same to the commissioner for approval. Specifications shall be prepared by the highway commissioner for the construction of a macademized or telford or other stone road or other road satisfactory to him, and the selectmen of the town, and shall call for the planting of shade trees when deemed advisable by the selectmen and the com-

missioner. For improvements to cost \$1,000 or less, the commissioner may allow the town to do the work without competition; but where such cost is to be over \$1,000, it shall be the duty of the selectmen, after approval of the plans by the commissioner to advertise in two daily newspapers, having circulation in the county, for one week, for bids to do the work. All bids received, being accompanied with a bond satisfactory to the selectmen, shall be referred to the highway commissioner for his approval. The successful bidder shall furnish a bond for one-third of the amount of the cost of the construction of the work.

Whenever the selectmen shall neglect or refuse to carry out the vote of the town for the improvement of a public road under the provisions of this section, and section 2088, after four months' notice by the highway commissioner so to do, the commissioner shall perform all the functions of the selectmen as expressed in the town vote. Whenever the selectmen of any town shall desire in behalf of the town to do the work, they shall submit their bids to the highway commissioner at least one day prior to the day specified for the opening of the other bids as stated in the advertisement for bids. If the commissioner shall find that the bid in behalf of the town is the lowest, he shall thereupon award the contract to the town; and the selectmen shall forthwith file with the commissioner a statement setting forth the work to be done and the estimated cost of the same, and shall fulfill all the requirements and terms of the specifications according to the plans for the work under which their bid was submitted. S. 2087.

Repairs.—When a road has been constructed in any town under section 2087, such town shall thereafter keep such road in proper repair to the acceptance of the highway commissioner, and in case of neglect to make such repairs, after one month's notice by the highway commissioner that such road is in need of repairs, the commissioner is authorized to make such repairs as may be required and the town shall pay the cost of the same.

A certificate of the cost of every road constructed under section 2087, shall be filed with the highway commissioner by the selectmen, or by the authorized authority over the work of the town. The state treasurer is required to pay, upon orders of the comptroller, the sum certified to each town out of any money in the treasury not otherwise appropriated. No sum exceeding in the aggregate \$4,500 shall be expended in any town in any one year under the provisions of this section, and section 2087. The term "public roads" as used in these two sections shall be construed to mean and include only the main highway leading from one town to another. S. 2088.

Scavengers, Duties.—Any proprietor may apply to the selectmen to estimate the expense of repairing a dam, drains, or ditches inspected by scavengers. S. 4504.

Schools; Duties of Selectmen.—Except as provided in section 2218 the selectmen shall have the management of any property pertaining to schools and belonging to the town; shall lodge with the treasurer all bonds, leases, notes, and other securities, which have not been, or shall not be, intrusted to others by the grantor, the general assembly, or the town; shall pay to the treasurer all money which they may collect and receive for the use of schools. They shall cause the boundary lines of school districts to be entered on the records of the town, designate the time, place, and object of holding the first meeting in a new district, and shall perform all other lawful acts required of them by the town, or necessary to carry into full effect the powers of towns with regard to schools. S. 2138.

Flags for Schoolhouses.—The selectmen shall provide every schoolhouse in which a school is maintained within their respective towns with a United States flag of silk or bunting, not less than four feet in length, and a suitable flagstaff, or other arrangement whereby such flag may be displayed on the schoolhouse grounds every school day when the weather will permit, and on the inside of the schoolhouse on other school days, and renew such flag and apparatus when necessary. S. 2139.

School Districts; Boundary Lines.—When the boundary lines of any district are not clearly settled and defined, the selectmen of the town in which it is situated shall settle and define the same; they shall also settle and define the boundary lines of any new district; in case of disagreement of the selectmen the town may appoint three indifferent persons, who shall have the same authority as the selectmen; and when parts of such districts lie in two or more towns, the selectmen of the towns or in case of disagreement, three indifferent persons appointed by a judge of the superior court shall settle and define the boundary lines of such part. S. 2179.

Improvements Paid for.—When any town has voted to re-establish its school districts pursuant to section 2214, each of the districts shall pay the town for the improvements made by it within the district. The amounts thus paid shall be determined by the selectmen and the town school committee. If any district neglects or fails to make the payments required for six months after the vote to re-establish it, the selectmen may cause a tax to make such payment, to be laid on the district as provided by law for school district taxes except that the selectmen shall perform the duties required of district committees therein, and to be collected and paid by the town. S. 2229.

Joint.—Whenever any town has voted, or shall vote, to assume control of all the schools, as provided in this chapter, in case there is a joint district the selectmen of the towns out of which such joint district is formed shall meet within ten days after receiving a written

request for such meeting signed by the first selectman of either of said towns, and appraise the schoolhouse and other school property owned and used by said joint district and determine what proportion is owned by the inhabitants of the towns residing in said district. If the several boards of selectmen shall not agree, the same shall be determined by a judge of the superior court upon application of either of the boards of selectmen, and his decision shall be final. The proportion belonging to the tax-payers of the town in which the property is not located, after deducting the indebtedness of the district, shall be paid to the treasurer of such town by the treasurer of the town in which such property is located. S. 2221.

Parts Abolished.—When any part of a school district lying in two or more towns shall be abolished or consolidated by either, its selectmen shall give immediate notice thereof to the selectmen of the other town or towns, which shall thereafter provide for the schooling of the children belonging thereto who formerly belonged to said district. S. 2225.

School Districts Abolished.—Any school district which has been or shall be abolished by any town may settle and close up its affairs; and its district committee or the selectmen of the town may call special meetings of the district. S. 2226.

If any such district has become liable to pay any claims or demands upon it after consolidation, the selectmen of the town, upon request of the district, shall pay the same and charge the amount to the district, and said amount shall be raised by the selectmen adding the same to the tax to be laid by said town on its grand list next completed of the taxable property of such district. S. 2227.

The selectmen shall collect all taxes, claims, and demands in favor of such district, in the name of the district, and credit the same to the district less expense of collection. S. 2228.

Joint Expenses of.—The selectmen of any town schooling children residing in another town and in a district in which no school is maintained may ascertain the expense of schooling said children and present a bill of said expense to the selectmen of the town in which said children reside. S. 2277.

Signposts, Erected and Maintained.—One or more signposts shall be erected and maintained in each town at such place or places as the selectmen may designate. Each town may order any additional signpost to be erected in it; and the selectmen may change the location of any signpost, but any change so made shall be approved by a vote of the town at its next annual meeting thereafter. S. 1913.

Snow and Ice, Removal from Sidewalks.—The selectmen may remove any snow or ice from any sidewalk upon the default or neglect of the owner, tenant, or occupant of adjoining and fronting premises to comply with the town by-laws; and the expense of such removal shall

be a lien upon the premises adjoining and fronting such sidewalk, *provided* said selectmen cause a certificate of lien to be recorded in the town clerk's office within sixty days from such removal. S. 1915.

Soldiers' Orphans, Returns of Lists.—The selectmen of each town and the treasurers of the New Haven and Hartford orphan asylums, Fitch's home for soldiers, and the Connecticut soldiers' orphans' home shall, quarterly, return to the comptroller written lists of the names and ages of all such children resident in such towns or institutions respectively, with the name of the father, the organization to which he belonged, and the place and date of his death, and certify on such returns that all the children named therein are entitled to this state bounty, and have no adequate means of support, which certificates shall be subscribed by such treasurers or selectmen and verified by affidavits; and such treasurers and selectmen shall, from time to time, report any changes that may occur by reason of the death of such children, or their arrival at the age of fourteen years. S. 2890.

Payments for.—The selectmen may direct to whom money for soldiers' orphans shall be paid by the town treasurer. S. 2892.

The acts of 1866 and 1868, providing for a state bounty to the children of soldiers, made the town treasurers agents of the state in the distribution of the money and liable personally for money thus received and not paid over.—*Hartwell v. New Milford*, 50 Conn. 522.

Soldiers, Sailors, and Marines Buried.—Any veteran of the army, navy, or marine corps of the United States, or of the Spanish-American war, who was honorably discharged, residing in any town, who shall die, shall be buried at the expense of the town, provided that he shall not have had sufficient estate to pay the expenses of his burial. The selectmen shall pay such burial expenses, and upon satisfactory proof by them made within six months after the date of death to the acting quartermaster-general, of the identity of the deceased, the time and place of his death and burial, and the insufficiency of his estate, and the approval thereof of said quartermaster-general, the sum of thirty-five dollars shall be paid to the selectmen by the comptroller. SS. 2880, 2881.

Families.—The selectmen of any town to which the family of any soldier, sailor, or marine, who has been admitted to any institution in the state, belongs, when authorized by the soldiers' hospital board, may expend for the support of such family a sum not exceeding \$2 per week for each person during the time such soldier, sailor, or marine shall be an inmate of such institution; and said hospital board shall draw its order quarterly on the comptroller in favor of such selectmen to reimburse them for the amount so expended. No person on whose account such expenditure is authorized by said board shall be permitted by said selectmen to be an inmate of any almshouse. S. 2870.

Street Railway, Locations.—When any company shall have been chartered by the general assembly for the purpose of operating street railways, or when any such company already organized has been or shall be given the right to lay additional tracks, before such company shall proceed to construct such railway or lay additional tracks, it shall cause a plan to be made showing the highway or highways in and through which it proposes to lay its tracks, the location of the same as to grade and the center line of said highways, and such changes, if any, as are proposed to be made in any highway. Said plan shall be presented to the selectmen of each town, within which such company proposes to operate its railway, who shall thereupon, after public notice, proceed to a hearing of all persons interested therein, and after such hearing may accept and adopt such plan, or make such modifications therein as to them shall seem proper, and shall, within sixty days after the presentation of such plan, notify such company in writing of their decision thereon and of such modifications therein as they have made. The refusal or neglect of any such local authorities to notify such company of their decision within the period of sixty days as aforesaid shall be deemed a refusal to approve and accept such plan as presented by such company. S. 3823.

A horse-railroad does not impose a new servitude upon the land; the franchise is a part of the public use to which the land was originally subjected when taken for a highway.—*Elliott v. Fair Haven, etc., R. R. Co.*, 32 Conn. 579.

The company was restricted by the terms of its charter and could not use overhead wires, even with the permission of the city authorities.—*Farrell v. Winchester Avenue R. R. Co.*, 61 Conn. 127.

The location of an electric railroad in a public highway does not impose an additional servitude upon the soil for which the owner of the fee can ask compensation, unless the mode of its construction or operation makes it a substantial impediment to public travel, or a proximate cause of special damage to the owner of the soil.—*Canastota Knife Co. v. Newington Tramway Co.*, 69 Conn. 146.

Control of Fixtures in Highways.—The selectmen of each town shall, subject to the right of appeal, as provided in sections 3832, 3843, have exclusive control over the placing or locating of tracks, wires, conductors, fixtures, or other permanent structures of any street railway in the highways, over the re-locating or removal of the same, and over changes in the grade of such railway, and make all orders necessary to the exercise of such power of control and may revise and change such orders; *provided* that orders concerning re-location, removal, and changes of grade shall be made only for the purpose of public improvement. Said orders shall be in writing and shall be recorded in the records of the respective municipalities. Every such company shall, at its own expense, comply with and carry out such orders forthwith, and, in case of its failure so to do, such town may carry out said orders, and recover the expense thereof from such company in an action on this statute, or may proceed by writ of mandamus to compel such company, at its own expense, to carry out such orders. SS. 3824, 3826.

The selectmen have no power, without the owner's consent, to cut or trim trees on his land adjoining a highway, to enable a telephone company to construct and maintain its line in the highway.—*Bradley v. Southern N. E. Tel. Co.*, 66 Conn. 559.

It is the duty of the town as well as of the street railway company to take reasonable precautions to warn travelers against damages arising from an excavation within the railway lines.—*Carstesen v. Town of Stratford*, 67 Conn. 428.

Conditions which the municipal authorities have no power to impose they cannot require a street railroad company to accept and perform as a condition of their approval of the plan presented.—*Central R. R. & Electric Company's Appeal*, 67 Conn. 197.

It is lawful for a telephone company and an electric street railway company to use the same poles in a city street, especially when requested so to do by the municipal authorities.—*Bergin v. So. New Eng. Tel. Co.*, 70 Conn. 54.

A municipality has the power to order the removal of tracks and other structures which are not located according to the plan presented by the railway company and approved by the municipal authorities.—*Hartford v. Hartford Railway Co.*, 73 Conn. 327.

Whether a given condition or restriction attempted to be imposed by a city upon a street railroad company is one which the city may lawfully impose is a judicial question.—*Fair Haven, etc., Railroad Co. v. New Haven*, 74 Conn. 102.

The power to compel street railway companies to repair their part of the highway, conferred by the act of 1893 upon local municipal authorities, was not repealed by the act of 1901.—*Hartford v. Hartford St. Railway Co.*, 75 Conn. 471.

Grades.— No order shall be issued by the selectmen of any town authorizing or requiring a change of grade in any highway, or the location or re-location of any railway tracks in a highway, as authorized by section 3824, except upon a majority vote of all the selectmen after a public hearing, of which at least five days' notice shall have been given, with the nature of the proposed change and the location of the same fully set forth therein. S. 3827.

Orders Recorded.— Whenever the selectmen of a town shall prescribe the location of railway tracks in a highway, or authorize a re-location of tracks already laid, or a change of grade thereof, they shall within ten days thereafter cause their decision in regard thereto to be recorded in the town clerk's office. S. 3828.

Street Railway Companies, Regulation of Speed.— The selectmen of any town shall have power to pass suitable regulations relating to the speed at which any such company may run its cars upon any highway, and may alter and amend the same at pleasure, and from such regulations there shall be no appeal; but none of such authorities shall, by such regulations, authorize or permit such cars to be run upon any highway at any greater rate of speed than fifteen miles per hour. S. 3841.

The statute merely restricts the local authorities in their regulation of the rate of speed; it does not fix the rate.—*Laufer v. Bridgeport Traction Co.*, 68 Conn. 475.

Summary Process, Action by.— An action by summary process may be maintained by the selectmen of a town in its name to gain pos-

session of any land or building belonging to the town which is held under a lease. Such an action by selectmen shall be brought to and tried before a justice of the peace of an adjoining town, and by a jury from such town when a jury trial is demanded by the defendant. S. 1083.

Rate-bill Made by.—When any town shall neglect to lay necessary taxes, its selectmen may make a rate-bill upon its list last completed for the amount necessary, and cause the same to be collected as other taxes. S. 2362.

Taxes, Abatement of.—The selectmen of towns may abate the taxes assessed by their respective communities upon such persons as are poor and unable to pay the same; and shall present to each annual meeting of their respective communities a list of all persons whose taxes they have abated in the preceding year. S. 2388.

School District, Board of Relief.—The assessors and selectmen of the town shall have the same power in relation to the tax-list of a school district, that the board of relief has in relation to town-lists. S. 2418.

Tax-payers, List of.—Lists of tax-payers delivered by the town treasurer to the selectmen shall be kept by them until the collector's accounts have been finally settled. S. 2409.

Telegraph and Telephone Companies.—The selectmen of any town shall, subject to the provisions of section 3904, have full direction and control over the placing, erection, and maintenance of any wires, conductors, fixtures, structures, or apparatus, including the re-locating or removal of the same and the power of designating the kind, quality, and finish thereof. They may make all orders necessary to the exercise of such power of direction and control, which orders shall be in writing and recorded in the records of their town, but are subject to the right of appeal by such company to a judge of the superior court. S. 3905.

The consent of the adjoining proprietors is not a condition precedent to the action of the municipal authorities in directing the location of the wires of an electric light company.—*Norwalk Elec. L. Co. v. Common Council*, 71 Conn. 381.

Tenants Ejected, Sale of Effects.—Whenever a tenant is ejected by legal process, and his effects are set out on the sidewalk, street, or highway and are not removed by the owner or the tenant within twenty-four hours, the selectmen of the town shall remove and store the same at the expense of the owner or tenant, and, if said effects are not called for, and the expense of removal and storage are not paid within fifteen days, the selectmen may sell said personal effects at public auction after posting notice thereof, and shall pay over on demand the net proceeds to the owner or tenant, after deducting a reasonable charge for removal and storage, and, if not so demanded within thirty days, to the town treasury. S. 1088.

Town Meetings, Special.—Special town meetings may be convened when the selectmen shall deem it necessary, and they shall convene a special town meeting on application of twenty inhabitants qualified to vote in town meetings within ten days after receiving such application. S. 1793.

A constable chosen and sworn and re-chosen the next year was held competent to act as a lawful constable, although not sworn again until afterwards.—1 R. 83.

An officer elected for "the year ensuing," in the absence of a restrictive provision, may continue to exercise the office after the year expires until he is superseded by the election of another person in his place.—*McCall v. Byram Mfg. Co.*, 6 Conn. 428.

Where a town had elected only one selectman and he acted in the division of a fence between adjoining proprietors, under the statute which confers power on "the selectmen" so to act, it was *held* that as he acted by the request of both parties no objection could be taken to his want of power.—*Kellogg v. Brown*, 32 Conn. 108.

An application for a special town meeting by twenty inhabitants qualified to vote is not addressed to the discretion of the selectmen; it is their duty to call the meeting when so requested. They need not call the meeting at the time specified in the application, but may appoint any other reasonable time.—*Lyon v. Rice*, 41 Conn. 245.

There is no such officer in a town as "town agent." A town may appoint an agent for any proper purpose by a vote in town meeting duly warned for the purpose.—*Pinney v. Brown*, 60 Conn. 164.

Town Meetings, Warning.—A printed or written warning of any town meeting, signed by the selectmen, or a majority of them, set upon the signposts in the town, or printed in a newspaper published in said town at least five days previous to holding the meeting shall be sufficient notice thereof, except in those towns where such warning is directed by special charter provision, to be otherwise given; but any town may at an annual meeting, designate any other place or places in addition to the signposts, at which such warnings shall be set up, and the selectmen shall, on or before the day of such meeting, cause a copy of every such warning to be left with the town clerk who shall record the same. S. 1795.

Even after a practice of fifty years of holding annual meetings on a certain day, the holding of such meeting without notice is illegal.—*Hiscock v. Hoskins*, 4 D. 62.

To constitute a legal town meeting for the passing of by-laws there must be a notification in writing signed by the selectmen and set upon the signpost five days before the meeting, specifying such by-laws among the objects of the meeting. By-laws passed without such previous notification are void.—*Hayden v. Noyes*, 5 Conn. 391.

It is incumbent on the party offering the vote of a town meeting to prove that the meeting was legally warned.—*Willard v. Killingworth*, 8 Conn. 247.

Where the record shows that the meeting was held on the day appointed the presumption is that it was held at a proper hour.—*School District v. Blakeslee*, 13 Conn. 227.

A town clerk's record that a meeting was legally warned and held is *prima facie* evidence of the fact.—*Isbell v. Railroad Co.*, 25 Conn. 555.

A warning of a town meeting addressed to "the inhabitants" of the town is valid, but the warning need not be addressed to any persons. All that the statute requires is a written notice of the meeting.—*Baldwin v. North Branford*, 32 Conn. 47.

A notice of a meeting expressed "for the purpose of acting on a proposition to pay such money as might be deemed expedient to such citizens of the town," as should volunteer and be mustered into the military service of the United States, and be applied on the quota of the town, was *held* to be sufficient to authorize a vote to pay bounties to others than citizens of the town.—*Bull v. Warren* 36 Conn. 83.

An act of the legislature validating the proceedings of towns in voting bounties to volunteers and drafted men validates such proceedings whatever may be the ground of their validity.—*Stuart v. Warren*, 37 Conn. 225.

A vote at a town meeting accepting a highway upon a report of the selectmen is void without notice given in the warning of the meeting.—*State v. Taff*, 37 Conn. 392.

So the vote of a school district as to employment of a teacher had no legal effect because of want of notice in the warning. The certificate of a clerk imports verity only as to the matters upon which the district may lawfully act.—*Wilson v. School District*, 44 Conn. 157.

A town is not estopped by an erroneous record of the town clerk from denying the validity of a vote. The statute fully considered and the rules for warning a town meeting construed.—*Brooklyn Trust Co. v. Hebron*, 51 Conn. 22.

A meeting of the school district which was adjourned to Wednesday evening at 8 o'clock, was valid when held on the next Wednesday evening. The validating act of the legislature cured the defects in the action of the first meeting and of all subsequent proceedings based upon it.—*First School District v. Ufford*, 52 Conn. 45.

A vote authorized the selectmen to call in the bonds of the town without limiting the time; *held* that their action was valid after the lapse of a year.—*Town of Essex v. Day*, 52 Conn. 483.

The original vote of a school district being illegal, because of a defect in the warning of the meeting, it was *held* that no inhabitant of the district was under necessity to attend a later meeting called to rescind the vote of the former meeting.—*Wright v. School District*, 53 Conn. 576.

The action of a town if kept within the limit of the application and of the warning of the meeting is valid even if it departs somewhat from the exact terms of the warning.—*Gravel Hill School District v. Old Farm School District*, 58 Conn. 588.

The acquiescence of a town in the action of its selectmen and the vote directing suit to be brought under it constituted a ratification of their action in making a lease.—*Town of Rocky Hill v. Hollister*, 59 Conn. 434.

Any action of the town in a legal town meeting of which notice was not given in the warning has no legal effect.—*Pinney v. Brown*, 60 Conn. 165; *Woodward v. Reynolds*, 58 Conn. 488.

Town Officers Appointed.—All town officers provided for by law and not chosen by the town shall be appointed by the board of selectmen. S. 1808.

Town Officers, Vacancies Filled.—If any town office in any town shall become vacant from any cause, such town, if such office is elective, may in legal town meeting fill the vacancy; but until the town shall fill it, such vacancy may be filled by the selectmen; and the selectmen shall fill all vacancies that may arise in offices to which they have power of appointment. S. 1814.

Treasurer; Bond; Town Orders.—The selectmen shall require of the treasurer a sufficient bond; and the selectmen who shall neglect or refuse to require such bond shall be jointly and severally liable to the

town for all moneys not accounted for by the treasurer. They shall make a sworn report to the treasurer of the amount, number, and date of each town order drawn by them, at the end of every month. S. 1830.

Tramp Officers.—The selectmen are empowered and required to appoint special constables, whose duty it shall be to arrest and prosecute all tramps in their respective towns. S. 1340.

Voting-machines.—Under an act of the general assembly approved June 19, 1903, a board of voting-machine commissioners was established, which board, appointed by the governor, is charged with the duty of selecting a voting-machine which may be adopted for use at elections.

In towns adopting voting-machines, the board of selectmen is required to provide for each polling-place one or more machines in complete working order and thereafter to preserve and keep them in repair. They are further required to appoint a suitable mechanic or mechanics, to place and adjust such machines and otherwise prepare them for elections. Such mechanics file a written report of the condition of each machine prior to the election, certifying that the machine has been prepared by them, and that it is in readiness for the election. They are also required to place upon each of the machines a seal with sealing wax, in such a way that before any movement of the registering or voting mechanism can be made, such seal will be destroyed or broken. Other regulations for the care of the machines, notice to chairmen of the town committees, and reports to be filed with the town clerk are made by the act, to secure a more perfect protection against tampering with the machines. Acts of 1903, C. 207.

Ballots; Ballot-labels.—The selectmen are required to provide for all polling-places using voting-machines at least two sample ballots, arranged in the form of a diagram, showing the front of the machine as it will appear after the ballots are arranged for voting on the day of election. *Ibid.*, S. 4.

The portion of cardboard, paper, or other material placed on the front of the machine, containing the names of the candidates or a statement of the proposed constitutional amendment, or other question, or proposition to be voted on, is known as a ballot-label. Each party furnishes its own ballot-labels, according to the form of labels and instructions furnished by the town clerk. Such labels contain the names of the offices and of the candidates, and must be approved and accepted by the town clerk not less than three days prior to the election. Four each of such labels printed on cardboard are furnished for each machine to be used in the election; and six additional labels printed on paper are also furnished by the two leading political parties for the purpose of making up the sample ballot diagram. Directions in great detail are given by the act for the arrangement of the names of candidates and of places where labels are to be used in the preparation and printing of the ballots and the ballot-labels. *Ibid.*, S. 5.

Election Officials.—The election officials of each polling-place consist of a moderator, two checkers, two deputy registrars, two challengers, and two voting-machine tenders, and if more than one machine is used, two additional tenders are appointed for each additional machine. The duties of the moderator and other officials are defined and set forth in great detail, for the particulars of which the reader is referred to the act itself. *Ibid.*, S. 10.

Voting-places Provided.—The selectmen of each town shall, unless otherwise specially provided by law, provide a suitable place in the town, or in each voting-district, for voting at each electors' meeting, and shall give public notice thereof at least one month before the day of such meeting, but the selectmen of Meriden may provide a suitable place in the town-hall building for electors of the fourth district in said town. S. 1638.

Voting-rooms, or Booths.—The selectmen of each town, unless otherwise provided by law, are required to provide a suitable room, or rooms, or booths for holding meetings for elections and all ballot-boxes required for such elections. One room, or booth, shall be provided for each one hundred and fifty names on the registry list of the town, except that in towns having fifteen hundred names on such list there shall be one for each two hundred and fifty names. Such rooms or booths shall be supplied with necessary conveniences for electors to arrange their ballots and place them in the envelopes, but shall not contain any ballots or pasters.

Every ballot-box shall have an aperture in its lid for the deposit of ballots and be so constructed that the aperture may be closed when the voting is completed, and no ballots can be afterward put into the box without opening it. Such boxes shall be marked respectively, "general ticket" and "women's ballots."

The selectmen shall also provide, unless otherwise provided by law, at the entrance into the room or booth, an envelope-booth and a ballot-booth at which the voter may obtain ballots. SS. 1639, 1640.

Ways, Private, Gates and Bars.—The selectmen of any town may authorize gates and bars to be erected and kept upon any private way, which has been laid out by them in such manner as they may direct. S. 2034.

Weights and Measures, Standard.—The selectmen of each town shall provide weights and measures of the various kinds contained in the standard set mentioned in section 4876, as standards for such town, the standards for liquid measure to be of copper, brass, or pewter, and cause them to be tried and stamped by the county standards, and shall also provide pint, quart, and two-quart corn measures of the same proportionate dimensions as the state standards. S. 4878.

Workhouses, Overseers.—The selectmen shall be the overseers of the workhouse, may appoint and for misconduct remove a master of the same, superintend, and direct him, as to the management, labor, and food of the prisoners; visit such workhouse at least once in three months; see that the law is duly executed, and take care that the prisoners are suitably provided for. S. 2961.

SPECIAL CONSTABLES.

See "Selectmen."

Surveyor of Highways.—Surveyors of highways are appointed annually by the selectmen to serve until the annual town meeting next succeeding their appointment. SS. 1808, 1806.

TOWN AGENTS.

Appointment; Bond; Duties.—In every town having not more than five thousand inhabitants which votes that no person shall receive a license for the sale or exchange of spirituous and intoxicating liquors within the town, the selectmen are required to appoint one suitable person to act as the agent of the town in the purchase and sale of such liquors for sacramental, medicinal, chemical, and mechanical uses only; and in towns of more than five thousand inhabitants the selectmen may, at their discretion, appoint one such agent for each five thousand inhabitants, and for any fraction exceeding one-half thereof. Town agents hold their offices for one year unless sooner removed by the selectmen.

They are required to give bond with sureties approved by the selectmen for a sum of not less than five hundred dollars, for the faithful performance of their duties, which are fully set forth in the statutes. SS. 2722-2734.

TOWN AUDITORS.

Election.—Every town at its annual meeting elects two auditors, to serve for one year from the date of their election.

Auditors are voted for by ballot on the general ticket, and the two persons having the highest number of votes for the office are declared elected; but no person shall vote for more than one auditor. C. 112, SS. 1802, 1806, 1808, 1811.

Duties.—The auditors of the several towns shall examine and verify the town accounts and all matters appertaining thereto, prepare the same for publication, and make sworn report thereon, as may be directed by the town. S. 1877.

Compensation.—Auditors of town accounts shall be paid by their respective towns, three dollars per day each, for the time employed in the performance of their duties. S. 4849.

TOWN CLERK.

Election.— All towns, except as specially provided by law, shall, at their annual meeting in 1903, and biennially thereafter, elect by ballot town clerks, who shall hold office for two years from the first Monday of January next succeeding their election and until their successors are elected and qualified.

If any town clerk shall be elected registrar of voters, the election shall be void. SS. 1801, 1805, 1808.

Official Bond.— The clerk of every town is required to give bond to the town in such sum not exceeding one thousand dollars, as the selectmen shall order, with surety to their acceptance, for the faithful performance of the duties of his office. A refusal to give such bond upon the request of the selectmen vacates the office. S. 1842.

Clerk Pro Tempore.— When the town clerk is absent from any town meeting, the town may choose a clerk *pro tempore*. S. 1843.

Acting Clerk.— When any town clerk is unable to discharge the duties of his office, and has omitted or is unable to nominate an assistant, the selectmen may appoint one who, having been duly sworn, may act as town clerk during such inability or until the next annual meeting of the town. S. 1845.

Assistant Clerk.— Any town may nominate an assistant who having been approved by one of the selectmen and taken the oath provided for town clerks, may, in the absence or inability of the clerk, perform all his duties, except deciding upon the qualifications of electors. Said assistant shall give bond to the town in such sum not exceeding \$1,000 as the selectmen shall order, with surety to their acceptance, conditioned for the faithful performance of the duties of his office. S. 1844.

Women Eligible.— No person shall be deemed to be disqualified from holding the office of assistant town clerk by reason of sex. S. 1846.

Attachment of Personal Property.— Attachments of certain kinds of personal property without removal shall be effectual, if the service be completed and a copy of the process and complaint, with a description of the property, be filed in the office of the town clerk of the town in which the property is situated. S. 831.

Where a removal of property attached would be attended with great waste and expense, it may be dispensed with. The continual presence of the officer with the property, by himself or an agent, is not necessary, it being sufficient if he exercises due vigilance to prevent its going out of his control.— *Mills v. Camp*, 14 Conn. 218.

The rule requiring the removal of attached property does not apply where the possession is otherwise openly and notoriously changed.— *Pond v. Skidmore*, 40 Conn. 213.

Where machinery was attached and taken possession of by an officer, and a keeper put over it by him, it was *held* not necessary to the validity of the attachment that it should have been moved, or made to appear by the officer's return that it could not be moved without injury.— *Morey v. Hoyt*, 62 Conn. 542.

Attachment of Real Estate.—When any real estate shall be attached, the town clerk in whose office the certificate of attachment is left, shall record it, or the names of each party to the suit, the amount of damages claimed, with the description of the attached estate, in a book kept for that purpose; his fees shall be paid by the plaintiff in the suit and be included and taxed with the officer's fees in said suit. SS. 1852, 829.

A variation in the copy is not fatal if the land is so described that no mistake could have happened in regard to it.—*Cooley v. Sanford*, K. 105.

A conveyance by the debtor after the attachment has been made according to law does not affect it.—*Davenport v. Lacon*, 17 Conn. 278.

An attachment upon land is an encumbrance within the meaning of a covenant against encumbrances.—*Kelsey v. Remer*, 43 Conn. 129.

An attachment cannot be made by an officer before the process directing it is placed in his hands.—*Wales v. Clark*, *Ibid.* 183.

An attachment creates a lien only for the amount to which the officer is directed by the writ to attach.—*Hubbell v. Kingman*, 52 Conn. 17.

The process of foreign attachment is not adapted to secure an interest in remainder, remote and uncertain.—*Smith v. Gilbert*, 71 Conn. 156.

Attachment of Wages; Assignment of Future Earnings.—Assignments of future earnings to be valid against an attaching creditor must be recorded before such attachment in the town clerk's office of the town where the assignor resides; or, if he reside without the state, in the town where the employer resides. S. 836.

Before commencing work, "A." assigned by an order on the defendants all money to become due to him while in their employ. This order was accepted by defendants and put on record as required by the statute. The wages of "A." were attached by a creditor; *held* that the assignment was good as against the attaching creditor.—*Harrop v. Landers*, 45 Conn. 561.

The word "earnings" is used in the ordinary popular sense as synonymous with wages, and, therefore, the statute has no application to an assignment by a contractor of moneys which were to be paid to him under his contract as the work progressed.—*Berlin Iron Bridge Co. v. Conn. River Banking Co.*, 76 Conn. 477.

Conveyances of Land, Execution.—Conveyances of land may be acknowledged before a town clerk or an assistant town clerk, within the town limits. S. 4029.

A deed, to the execution of which there was but one witness when the law required two witnesses, although recorded, was held to convey nothing and give no notice to a subsequent purchaser.—*Watson v. Wells*, 5 Conn. 468.

A certificate of acknowledgment need not expressly assert that the person who executes an instrument is personally known to the magistrate who makes the certificate.—*Sanford v. Bulkley*, 30 Conn. 348.

Conveyances of Land, Record.—The town clerk shall on the receipt of any conveyance of lands brought to him for record, note thereon the day, month, and year when he received it, and the record shall bear the same date; and when he shall have received a conveyance of lands to be recorded, he shall not deliver it up until it has been recorded; and where a conveyance is executed by a power of attorney it shall be recorded with the deed. S. 4036.

A town clerk having received a deed and entered upon it, "received for record," may not deliver it up unrecorded.—*Welles v. Hutchinson*, 2 R. 85.

Correction of Errors.—The town clerk shall correct all errors and omissions in the indexes to the land records of such town, and all omissions of the town clerk or his assistant to attest the records of conveyances of land with the genuine signature of such clerk or assistant, which shall be noted, and reported to him by any person appointed by the selectmen to examine and note the same. S. 1850.

Corporations, Certificate of Organization.—Corporations without capital stock are required to file for record in the office of the town clerk of the town where they are located a certified copy of their certificate of organization, with the indorsement thereon of the approval of the secretary of state, and the same shall be recorded by the town clerk. SS. 39, 37.

Certificates Recorded.—A duplicate certificate of increase of the capital stock of a corporation shall be filed in the town clerk's office of the town where the corporation is located. The annual certificate of condition of a corporation shall be recorded at length by the clerk of the town where the corporation is situated, in a book to be kept by him for that purpose. SS. 3325, 3344.

Dogs, Licenses.—Every owner or keeper of a dog of the age of six months or over, is required on or before the first of May, annually, to cause such dog to be registered, numbered, described, and licensed, until the first of May following, in the town clerk's office in the town where such dog is owned or kept, and shall keep around its neck a collar distinctly marked with the owner's name and its registered number. S. 4471.

Kennel License.—The town clerk shall issue to any owner or keeper of a kennel, upon application by him, a kennel license for one year from the first day of May, which license shall specify the name of the kennel, the name of the owner and keeper of the same and the breed of dogs kept therein. S. 4477.

License Money.—Town clerks are required to issue such licenses upon payment to them of the fees required by law, and, after deducting the fees allowed them, are required to pay the moneys so received to the treasurer of the town within thirty days thereafter. S. 4475.

List; Copy of Registration.—They are required annually, on or before the first of June, to furnish the selectmen with a list of the persons owning or harboring dogs who have caused the same to be registered. S. 4472.

Whenever a dog duly registered shall be removed from one town to another, the owner or keeper shall procure from the town clerk of the town in which said dog is registered a certified copy of such registration, and cause the same to be recorded in the records of the town to which such dog is removed. S. 4476.

Electors, Admission of.—In accordance with the provisions of section V, article 6 of the state Constitution, the town clerk and the select-

men of each town are required to pass upon the qualifications of all persons admitted as electors in this state.

For this purpose, the registrars of voters having prepared their lists, and deposited the same in the office of the town clerk, meetings are held by the town clerk and selectmen, acting as a board of admission, to determine the qualifications to be admitted as electors of the persons whose names are inscribed upon such lists. See "Selectmen."

Registrars' Corrected List.—The registrars shall deposit in the town clerk's office the corrected list of electors on or before the Wednesday preceding an electors' meeting. Said list shall be carefully preserved in said office for public inspection. S. 1612.

Meetings for.—The selectmen and town clerk shall hold a session to examine the qualifications of electors, and admit to the elector's oath those who are found qualified, on Friday of the third week before any electors' meeting, and, in certain cases, on the day before said electors' meeting.

They shall give notice of the times and places of their meetings by publication in a newspaper published in their town, if any, and by posting the same on the signpost of said town, three days before such meeting. S. 1620.

Every person found qualified shall take the oath provided for electors, and shall thereupon be admitted as an elector of this state. S. 1622.

List of Electors Admitted.—The board of admission shall deliver to the town clerk a certified list in writing of all persons admitted as electors at either of said meetings, and the names of all persons so admitted shall be recorded in the records of the town. S. 1624.

Before Annual Town Meetings.—The selectmen and town clerk of every town, except Bridgeport and Hartford, shall hold a session for the examination and admission of applicants as electors, on Saturday of the second week before the annual town meetings held in any town in 1903 and biennially thereafter from nine o'clock in the forenoon until seven o'clock in the afternoon, unless all on the list "to be made," have been admitted or rejected before that time. S. 1626.

Likewise in towns of less than ten thousand inhabitants, a meeting of such board shall be held to examine and admit persons found qualified on Saturday of the second week before the annual town meeting held in such town in 1902, and biennially thereafter. S. 1627.

Admission in Certain Towns.—The selectmen and town clerk of Hartford and of Bridgeport shall hold sessions for admission of electors as provided in S. 1625, and of Ansonia as provided in S. 1628.

Electors' Meetings; Envelopes and Sealing Stamps.—The secretary of state is required to furnish envelopes in sealed packages and one ad-

hesive ballot-box sealing stamp for each ballot-box to be used at any election held under the provisions of this chapter, five days before such election. Whenever any town clerk shall, not less than ten days before any special election notify the secretary of state thereof and of the number of names on the registry list, the secretary shall immediately prepare and forward the necessary number of envelopés with the proper date thereon.

The town clerk is also required to notify the secretary of state of the number of ballot-boxes to be used in such town at said elections. S. 1634; Acts of 1905, C. 192.

Envelopes Not Received; Unused Returned.—In case envelopes are not received from the secretary of state as provided in section 1634, at least three days, Sunday not included, prior to the day of election, the town clerk shall forthwith send a special messenger for said envelopes, and shall deliver to the envelope booth-tenders, at least thirty minutes before the opening of the polls for any election held under this chapter, in sealed and unbroken packages, the envelopes as received by him from the secretary. At the close of every such election the envelope booth-tenders shall return to the town clerk all unused envelopes and all mutilated envelopes then in their possession, together with a statement of the number of envelopes received, issued, and returned by them. On or before the expiration of thirty days thereafter the clerk shall destroy all such unused and mutilated envelopes, and make a sworn statement to the secretary of state of the number so destroyed. S. 1635.

Warnings.—The town clerk or assistant town clerk of each town, except the towns of Derby and Bridgeport, and in said Derby the mayor of the city of Derby and in said Bridgeport the mayor of the city of Bridgeport, shall warn the electors therein to meet on the Tuesday following the first Monday in November in the year 1902, and biennially thereafter, in Hartford, New Haven, Waterbury, Bridgeport, and Norwalk, at six o'clock, and in all other towns, unless by them otherwise previously ordered, at nine o'clock in the forenoon; which warning shall be given at least five days previous to said meetings by posting notice thereof on the signposts of the town, and in such other places as such town shall have ordered; and such meetings shall be held at the usual place or places of holding elections in such town, or the voting-districts thereof, as the case may be, unless the selectmen, by writing under their hands, shall have designated to such clerk before said notice a different place or places for holding such meetings; and the clerk in every town shall, in the warnings for such electors' meetings, give notice of the time and place in the town, and, in towns divided into voting-districts, of the time and place in each district, at which such meetings will be held, and that ballot-boxes will be opened at each

of said places; and a true and attested copy of said warning, shall, by the person who served the same, be left with the town clerk of his town on or before the day such meeting is to be held; and the town clerk shall record said warning in a book kept for that purpose. S. 1637.

Certified Check-list and Certificate of Votes Preserved.—The certified list of votes checked by the registrars and the certificate of the votes cast at an electors' meeting, deposited with the town clerk, shall be carefully preserved by him for public inspection, and he shall immediately enter a certified copy of such certificate on the town records. SS. 1655, 1657.

The return of the officers should show that rejected ballots were rejected for a legal cause.—*Phelan v. Walsh*, 62 Conn. 260.

Sealed Ballot-box Kept.—The ballot-box deposited by the moderator in the town clerk's office shall be carefully preserved by the clerk with the seal unbroken for six months after the meeting, to be opened and examined only by those officially authorized thereto. S. 1659.

Returns.—One of the triplicate lists of the votes cast at an electors' meeting for state officers and others at biennial elections, made out by the officers presiding at such meetings, is delivered to the town clerk within two days after the meeting. S. 1662.

The secretary of state transmits to the town clerk of each town before each biennial electors' meeting the blank forms for the returns required by this chapter. S. 1665.

The statute may require more complete returns and from other officers, or may create other tribunals to hear and report on such matters, than does the Constitution.—*State ex rel. Morris v. Bulkeley*, 61 Conn. 289.

The assembly has power by statute to enlarge the requirements in making returns of elections laid down by the Constitution.—*State v. Bulkeley*, 61 Conn. 287.

Town Elections.—The town clerks of the several towns shall, within ten days after the election of such officers, return to the secretary of state the names of the persons elected to the offices of selectmen, town treasurer, assessors, grand juror, constables, school visitors, or school committee with date of expiration of term, and registrars of voters, also the number of votes for and against license, and, if no vote was taken thereon, said return shall state whether the last preceding vote was for license or no license. S. 1819.

Representative; Vacancy, How Filled.—When any vacancy shall occur in the office of representative from any town on or before the first Tuesday of April succeeding any biennial election, the town clerk or assistant town clerk of such town shall forthwith warn an electors' meeting for said town, for the purpose of electing a representative to fill such vacancy, which meeting shall be warned, organized, and conducted in the same manner as biennial electors' meetings are required

to be. The registry list used at such meetings shall be the list last completed. S. 1668.

Explosives, License.—Permits for the manufacture or sale of any material or compound more explosive than gunpowder may be granted by the selectmen of the town where such business is conducted; and no person shall procure, transport, or use any such compound without first obtaining a written permit therefor signed by the town clerk or a selectman of the town where the same is to be used or kept for sale. Selectmen and town clerks may use their discretion in granting or refusing such licenses or permits, but shall never grant the same unless satisfied that a lawful use is intended. SS. 2617, 2618, 2621.

Impounded Animals.—In certain cases, the possessor of an animal found going at large without an owner, is required to give notice thereof to the town clerk with a full description of the animal seized, who shall thereupon record in a book kept for such purpose, and post upon the schoolhouse nearest to the place where the seizure was made, and upon the signpost nearest his office, and publish in a newspaper of the town or the county, if any, in which the town is situated, a notice that such animal will be sold at auction on a day and hour to be specified in the notice; and at such time shall sell the animal and out of the proceeds thereof retain his fees and charges and pay to the person who seized the animal the fees required by law, together with just damages for any injury occasioned by such animal, and a reasonable compensation for its care and keeping. If any surplus shall remain, the clerk shall pay it to the owner of the animal if demanded within one year after such sale, and otherwise it shall be paid to the town. S. 1902.

Itinerant Vendors, Local License.—Before selling under a state license in any town, city, or borough, every itinerant vendor shall exhibit such license to the clerk of the town in which he proposes to make sales, if there is no city or borough in such town, or if such sale is not to be made. S. 4664.

The act concerning itinerant vendors, Gen. St., SS. 4662–4668, upheld. The act does not prohibit a single or isolated transaction but only a distinct or continuous occupation involving a constantly recurring succession of such transactions carried on by a trader who moves from place to place. The general policy of the act discussed.—*State v. Feingold*, 77 Conn. 326.

Jurors, List; Drawing.—The town clerk of each town shall place slips containing the names of jurors received from the clerk of the superior court in a box to be kept by him for that purpose, and said court may direct said town clerk to draw the names of jurors from said box in the presence of a constable, as occasion may require. In case of the absence or inability of the town clerk, such drawing may be made by one of the selectmen. All names so drawn shall be returned to the box immediately after the drawing. S. 662.

Justices; Official Oath; Certificate.— Unless the official oath is administered by the town clerk, the officer before whom a justice of the peace is qualified shall transmit a certificate of that fact to the clerk of the town in which such justice of the peace is declared elected, and said clerk shall record the names of qualified justices. On or before the fifteenth day of January, in the case of justices of the peace elected at general elections, and within twenty days in case of special elections to fill vacancies, the town clerk shall make out certified lists of the qualified justices in duplicate, one of which shall be transmitted to the secretary of this state at Hartford and the other to the clerk of the superior court for the county. Said certificate shall be sufficient authority for said secretary and for said clerk to certify that the said justices were duly elected and qualified; and town clerks may likewise certify to the same facts in their respective towns. S. 419.

Records Left with Town Clerk.— Upon the death or removal from this state of a former justice of the peace, or upon his dismissal from office on account of crime, his files and records shall be lodged by him, or by his executor or administrator, in the town clerk's office in the town where he last resided, and such town clerk shall demand, receive, and safely keep said files and records, and give, when required, true, and attested copies thereof, which shall be legal evidence; and if such former justice of the peace, or his executor or administrator, shall refuse to deliver such files and records to the town clerk within ten days after demand, he shall pay five dollars for each week during which he shall so neglect or refuse to deliver the same, to the county where the offense is committed. S. 428.

Judgments Recorded.— Each town clerk shall keep a record book for the recording of judgments of justices of the peace. Any party to a civil action brought before a justice of the peace and prosecuted to final judgment, may cause such judgment to be recorded in the record book of the town where such action is brought, at any time within one year after the rendition of such judgment. S. 430.

To What Judgments Applicable.— Sections 430 and 431 shall apply to any such judgment obtained before the first of June, 1901, provided it has been recorded within six months after said date. S. 432.

Lands, Maps of Surveys.— When the owner or owners of any land shall have caused it to be surveyed, plotted, and laid out into lots and projected highways, and a map of such survey and plot made, and duly certified by the surveyor, the town clerk shall receive such map and duly number the same, and shall also keep in a book duly prepared for the purpose a record of such map, the number thereof, the date of filing, and the name of each of the owners of said land, and shall receive for such services the sum of one dollar. S. 4054.

Liquor Licenses, Applications.— The application for license properly indorsed shall be submitted to the town clerk of the town in which the business so licensed is to be carried on, who shall certify upon the same that each of said indorsers is an elector and tax-payer in said town, and said application shall then be transmitted to the county commissioners and a copy thereof, including said indorsement, shall be filed with said town clerk. S. 2657.

Mortgage or Lien, Release.— When any town clerk shall have recorded any instrument, known to him to be a release of any mortgage or lien recorded on the records of said town, he shall make a memorandum on the page where said mortgage or lien is recorded, stating the book and page where said release is recorded. S. 1851.

Mortgage Foreclosure, Process, Copy Filed.— The officer serving the process and complaint in such action shall leave a true and attested copy thereof at the said town clerk's office at least twelve days before the return day of said process; and the town clerk shall keep the same on file for the inspection of all persons having any interest in the estate therein described. He shall indorse on all such copies the date of their reception, and shall plainly number them as they are received, consecutively. He shall also keep a book in which he shall index said copies, referring to their numbers, under the plaintiff's name as grantee and the defendant's name as grantor. S. 866.

Oaths Administered.— Town clerks may administer oaths in all cases where an oath may be administered except in cases where the law shall otherwise require. S. 4794.

Proprietors' Records.— The proprietors of common and undivided lands may deposit their records with the town clerk in the town where the lands lie, and, where they lie in several towns, with the town clerk of the most ancient town; and when they have ceased to hold meetings, any person having the records in his possession shall deposit them with such town clerk, who shall give true copies thereof when required. S. 4063.

A paper recently found among the books, papers, and records of proprietors of lands representing lots and highways surveyed and laid out in June, 1770, held admissible as evidence of a highway thereon laid down.— *Noyes v. Ward*, 19 Conn. 251.

Railroads, Lien for Fencing.— A lien acquired by a railroad on adjacent land by erecting and maintaining a fence against the owner shall not continue in force unless within sixty days after the completion of the fence such company shall lodge a certificate with the town clerk of the town in which said land is situated describing the land and specifying the amount claimed thereon, and giving the dates of beginning and completion of such fence, which certificate shall be recorded by said clerk on the land records of the town. S. 3737.

Records and Copies.—Town clerks shall keep the books of their respective towns and truly enter therein all votes of the town and give true copies of the same and of all deeds and other instruments by them recorded; and all attested copies of deeds, with a certificate of the town clerk or assistant town clerk that they have been recorded, shall be conclusive evidence of that fact. No copy of record certified since the third day of July, 1877, or which may hereafter be certified by the town clerk or assistant town clerk of any town, shall be deemed valid in law, unless the seal of said town be affixed thereto; and it shall be the duty of the town clerk of every town, or his legally qualified assistant, to affix the seal of said town to all certified copies of record, and no fee shall be allowed for affixing the same. S. 1847.

An attested copy of the record of a deed is *prima facie* evidence of title, and may be admitted in evidence where the original is not in the power of the party.—*Parker v. Smedly*, 2 R. 286; *Talcott v. Goodwin*, 3 D. 267; *Clarke v. Mix*, 15 Conn. 151.

In the case of a lost instrument, it is necessary to prove not only its loss but its existence as a genuine instrument before evidence may be given of its contents.—*Kelsey v. Hanmer*, 18 Conn. 310.

An amendment of the record of a town vote made some years after the original entry, by the town clerk, not on his own personal knowledge but upon information of others, held invalid.—*Boston Turnpike Co. v. Pomfret*, 20 Conn. 590.

A certificate by a town clerk that P. was enrolled as a voter held inadmissible, it being necessary to produce a certified copy of the record of his enrollment.—*New Milford v. Sherman*, 21 Conn. 100.

The record by a town clerk of the proceedings of a town meeting in enacting a by-law, stating that it was adopted at a special meeting of the inhabitants legally warned and held for the purpose, is *prima facie* evidence that the meeting was especially warned for the purpose of making such a by-law.—*Isbell v. R. R. Co.*, 25 Conn. 555.

The record by the town clerk of the original vote, which declared it to have been passed at a meeting legally warned and held, did not estop the town from denying the legality of the vote.—*Brooklyn Trust Co. v. Town of Hebron*, 51 Conn. 22.

Record and Index of Instruments.—There shall be kept in every town proper books in which all instruments required by law to be recorded shall be recorded at length by the town clerk within thirty days from the time they are left for record; and also an index to the same containing the names of the grantors and grantees, in alphabetical order; and the town clerk shall, on receipt of any instrument for record, write thereon the day, month, and year when he received it, and the record shall bear the same date; but he shall not be required to receive any instrument for record unless the fee for recording it shall be paid him in advance, and when he shall have received it for record, he shall not deliver it up to the parties or either of them until it has been recorded. S. 1848.

Copies of deeds are not admissible in evidence without proof of loss of originals.—*Cunningham v. Tracy*, 1 Conn. 252.

The phrase "town clerk's office" is perfectly synonymous with the expression, "records of land in town."—*Isham v. Downer*, 8 Conn. 282.

If a deed be lodged for record with the town clerk, and be entered by him "received for record," and then withdrawn surreptitiously by a third person before it is recorded at length, this act will not defeat the title of the grantee.—*Hine v. Robbins*, 8 Conn. 342.

A town clerk may amend the records made by himself of proceedings of the town so as to state them truly, but only while he is in office.—*Boston Turnpike Co. v. Pomfret*, 20 Conn. 590.

Public Documents, Journals, and Reports.—The journals and the reports of the Supreme Court of Errors in the possession of the towns shall be carefully preserved for public use in the office of the town clerk. S. 48.

The town clerk shall keep such copies of all printed reports made to the governor or general assembly and of the General Statutes as may be sent to him, for public use. S. 125.

Deposit in Public Library.—The town clerk may deposit in a public library within his town any books, other than records, placed by law or otherwise in his custody. S. 4625.

Registrar of Births, Marriages, and Deaths, Ex Officio.—The town clerks of the several towns shall be *ex officio*, the registrars of births, marriages, and deaths in their respective towns, except in towns where such registrars are elected under special laws, and shall be sworn to the faithful performance of their duties as such. S. 1855.

The ballots "for town clerk and *ex officio* registrar of births, marriages, and deaths" were void, there being no office of that name. They should have been for the office of town clerk only.—*Fields v. Osborne*, 60 Conn. 549.

Assistant Registrar.—The town clerk of any town, who shall be *ex officio* registrar of births, marriages, and deaths in such town, may, with the approval of the selectmen, appoint, in writing, an assistant registrar, who, on being sworn, shall have the powers and perform the duties of such registrar during the time for which he shall be appointed, not extending beyond the term of office of such registrar. S. 1856.

Duties.—Every registrar of births, marriages, and deaths shall ascertain as accurately as he can all the marriages and deaths occurring in his town; and all births, upon the affidavit of the father or mother, and record the same in a book or books kept by him for that purpose, in such form and with such particulars as shall be prescribed by the state board of health. He shall give licenses to marry, according to the provisions of law; shall make and perfect all records of the birth and death of the persons born or deceased in his town, and when any birth or death shall happen of which no certificate shall be returned to him, he shall obtain the information required by law respecting such birth or death. He shall distribute to all persons in his town, who in his judgment are likely to need them, blank forms for the certificates and returns required by law to be made to him; shall execute the provisions of all by-laws, not contrary to law, that may be enacted by any

town or city or borough, to more effectually insure therein a more perfect registration of births, marriages, and deaths; shall record in the books furnished by the bureau of vital statistics such facts concerning the births, marriages, and deaths in his town as may be therein required; shall amend his records as he may discover mistakes or omissions therein; shall keep the records of his office, when a fireproof safe is not provided for his use, in the vaults provided for the land records of his town; shall on or before the seventh day of each month send to the superintendent of vital statistics an attested copy of every certificate of death received by him for the calendar month next preceding, or a notification that no such certificate has been received. Both of such notifications shall be in the form prescribed by the state board of health; and on or before the fifteenth day of every month an attested copy of every certificate of birth, and of every certificate of marriage received by him for the month next preceding. The registrar shall also transmit from time to time to the said superintendent an attested copy of all other certificates of births, marriages, and deaths which he shall acquire in amending or completing his records. S. 1858.

Official Seal.—The registrar of births, marriages, and deaths, in every town shall have an official seal, which shall be provided by the town, to be used in authenticating certificates and copies of record. S. 1857.

Shell-fisheries.—The commissioners shall keep books of record and record all grants and assignments therein, and the same shall also be recorded in the town clerk's office in the town bounded on Long Island sound within the meridian boundary lines of which said grounds are located. S. 3215.

Maps, Record.—The commissioners shall provide sectional maps of fishing grounds within the boundary lines of towns which maps shall be lodged in the town clerks' offices of the towns; also blank applications for such grounds and record-books for recording conveyances of the same; and all conveyances of such grounds and assignments, reversions, and releases of the same shall be recorded in the town clerks' offices of the towns adjacent to and within the meridian boundary lines of which the said grounds are located, in such books as are provided by said commissioners, subject to legal fees for such recording. S. 3216.

Stray Beasts, Lost Goods.—Any person finding a stray beast in a suffering condition or any lost goods of the value of one dollar, if the owner is not known, shall within fourteen days thereafter cause a particular description of them and of the place where they were found and his name, to be registered by the town clerk of the town in which they shall have been found. S. 4680.

The term "stray beast in a suffering condition" as used in the statute

means any beast found astray likely, unless taken care of, to suffer injury or be wholly lost to the owner.—*Sturges v. Raymond*, 27 Conn. 472.

Two kinds of property are contemplated. First, that which is by nature perishable; second, that which would materially depreciate in value.—*Webster v. Peck*, 31 Conn. 498.

Tax-lists, Abstract Sent to Comptroller.—The town clerk of each town after said lists have been examined and corrected by the board of relief, shall, on or before the first day of April, annually, transmit to the comptroller an abstract of said list, including the ten per cent. added by the assessors upon blank forms to be furnished by the comptroller; and it shall be the duty of the town clerk, in making such abstract, to correct any clerical error which may appear upon the corrected tax-list aforesaid. S. 2358.

Where the assessors omitted to lodge an abstract of the lists in the town clerk's office, as required by law, it was *held* that the lists by reason of such omission were invalid and no tax could lawfully be laid and collected thereon.—*The Thames Mfg. Co. v. Lathrop*, 7 Conn. 550.

Taxes, Changes by Board of Equalization.—If the board of equalization shall add to or deduct from the list of any town, the comptroller shall, on or before the tenth day of June, annually, give notice thereof to the town clerk of such town, who shall thereupon add to or deduct from said list such amount as may have been added or deducted by said board. S. 2360.

Town Records Kept in Fireproof Safes.—In every town where a fireproof safe, vault, or building for the protection of its records against fire has been provided, the town clerk shall keep all of said records in such safe, vault, or fireproof building, except when the same shall be in actual use for the purpose of examination or entry; and any town clerk who shall fail to perform this duty shall be fined not more than fifty-dollars. S. 1854.

Vessels, Liens on.—In order to establish a lien upon a vessel, a materialman must lodge with the town clerk of the town where the vessel was constructed or repaired a certificate in writing setting forth his claim, which certificate the town clerk shall record in a book kept by him for that purpose. S. 4161.

TOWN TREASURER.

Election; Term.—All towns, except as specially provided by law, shall, at their annual meeting in 1903 and biennially thereafter, elect town treasurers who shall hold office for the term of two years from the date of their election, and until their successors shall be elected and qualified. S. 1801.

Bond.—The town treasurer of every town shall give to such town a sufficient bond with surety to the acceptance of the selectmen, conditioned for the faithful discharge of the duties of his office. S. 1873.

A city is not limited to an action on its treasurer's official bond, but has a concurrent remedy in an action at law to recover damages caused by his breach of duty, in not depositing funds in a bank designated by the board of finance.—*New Haven v. Fresenius*, 75 Conn. 145.

Duties, General.— The town treasurer shall receive all the money belonging to the town; pay it out on the order of the proper authority; keep a record of all moneys received and when received, and of all moneys paid out, when, for what, and upon whose authority, which record shall always be open to the inspection of any tax-payer in said town, and shall be presented to each annual town meeting, being first sworn to by him and adjusted by the selectmen; and said treasurer shall call annually in December on the justices of the peace in the town for an account of the fines, penalties, and forfeitures received on judgments by them rendered, within one year next preceding the first day of December. S. 1874.

A town treasurer had no power to bind the town by giving notes without special authority from the town, and a bank taking such notes was bound to inquire into his authority.—*East Hartford v. American National Bank*, 49 Conn. 539.

Commutation Tax Paid to State Treasurer.— The town treasurers shall pay to the treasurer of state, on or before the tenth day of November, annually, such military commutation tax as is determined to be due from their respective towns by the returns of the selectmen to the adjutant-general last before made, except as hereafter provided; and the treasurer shall have the same power to enforce such payment as he has in the case of any state tax. The town treasurers, in making the payments above provided for, may deduct therefrom a sum equal to that part of the commutation taxes placed upon the rate-bills of their respective towns last issued which cannot be collected, not to exceed ten per cent. of such taxes. S. 2998.

County Commissioners' Report; Payments.— The county commissioners of the several counties shall, on or before the tenth day of each and every month, report to the treasurer of each of the several towns interested the number and kind of licenses granted within and for such town during the preceding month, and the amount of money received by them for each license so granted. S. 2648.

They shall pay to the treasurers of the several towns in their respective counties, on the first day of each month all moneys received for licenses from persons licensed in the said several towns during the month preceding, less the five per cent. ordered to be paid to the treasurer of said county, except that the county commissioners of New Haven county are required to make disposition of such moneys as specially provided. S. 2649.

Criminal Costs.— At the end of each criminal term of the superior court, the clerk of said court shall make a report to the treasurer of

each town interested, of all bills of costs taxed by said court, in favor of such town, in any criminal case sent to said court by any justice of the peace, together with a memorandum of any change made in the items of such costs by said superior court; and upon the written request of said town treasurer said clerk shall send to said town treasurer the amount of said bills of costs so reported. S. 1551.

Said town treasurer shall, within a reasonable time after the receipt of said costs from said clerk, disburse the same upon demand to the persons severally entitled to receive them, taking their receipts thereon. S. 1552.

Impounded Animals, Proceeds of Sale of.— The surplus proceeds of sales of impounded animals after payment of charges and fees, shall be delivered to the town treasurer to be kept for the owner, if he appears within one year, otherwise they shall belong to the town. S. 1897.

Perishable Property, Proceeds.— The proceeds of the sale of lost or unclaimed property, after deducting the expenses thereof and the charges for which they may be liable, shall be deposited with the treasurer of the town where they were left, who shall hold the same, subject to the order of the owner thereof. S. 4675.

Soldiers' Orphans' Money.— The treasurer of each town upon receiving such money from the treasurer of state, shall immediately pay over the proportion of each child to his legal guardian, or, if there be none, to the person who has the actual custody and control of such child; but the selectmen of the town, if they apprehend that an improper use will be made of the money by such person, may direct to whom such money shall be paid. S. 2892.

Record; Annual Report.— The town treasurer shall keep a record of all town orders presented to him for payment, whether he shall pay the same or not, showing to whom the same shall have been given and the amounts, dates, and numbers thereof, and shall make a sworn report to the town at its annual meeting in each year of all outstanding town orders with the names of the persons to whom given and the amount, date, interest, and number thereof. S. 1875.

Returns Under Oath.— All reports or returns, in any respect concerning public finances or the reception or disbursement of public funds made by treasurers of towns regularly in the line of their public duties, to any body, meeting, or committee acting in a public capacity, shall be verified by the oath of the person or persons making the same. S. 1971.

Tax-payers, List Kept.— All town treasurers shall preserve all said lists so delivered to them until the next annual audit and settlement of their accounts with their respective towns, and then deliver the said lists to the selectmen, who shall keep them until the accounts of the collector delivering the same are finally settled with the town. S. 2409.

Town Deposit Fund.— A fund created in pursuance of an Act of Congress, approved June 23, 1836, and known as the Town Deposit Fund, is held as custodian by the town treasurer of each town under the conditions expressed in the act and in accordance with the statutes of the state. The treasurer is required to execute a bond to the town with surety to the acceptance of the selectmen for the faithful execution of his office as treasurer of the fund. He is further required to report forthwith to the comptroller any loss or deficiency in the fund, and any illegal or improper management or applications of its income which shall come to his knowledge, under penalty of forfeiting twenty dollars to the state for every week that he neglects to make such report. Other duties in relation to the fund are prescribed in the statutes. SS. 1921-1930.

Town Orders Called in.— The treasurer of any town may, at any time, give notice to all persons holding orders drawn by the selectmen on the treasurer of such town to present them for payment on or before a certain day to be fixed in said notice, which shall be at least thirty days after the date thereof. Such notice shall be advertised for three weeks successively in a newspaper printed or having circulation in said town, and be posted on the sign posts therein. S. 1876.

VOTING-MACHINES.

See "Selectmen."

VOTERS.

See "Electors."

WARDEN AND BURGESSES.

See "Boroughs."

